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(856) 596-8900
Attorneys for Complainants

**In re Complaint Filed by the
Franklin Township Board of Education
Regarding P.L. 2020, Chapter 44.**

**In re Complaint Filed by the
Gloucester City Board of Education
Regarding P.L. 2020, Chapter 44.**

**In re Complaint Filed by the
Lower Township Elementary Board of
Education Regarding P.L. 2020, Chapter 44.**

**STATE OF NEW JERSEY
COUNCIL ON LOCAL
MANDATES**

**COLM-0001-21
CONSOLIDATED ACTIONS**

**NOTICE OF MOTION TO
COMPEL DISCOVERY**

TO: Leon J. Sokol, Esquire
lsokol@cullenllp.com
Attorney for Respondents, Senate President Stephen M. Sweeney and Assembly Speaker
Craig J. Coughlin

PLEASE TAKE NOTICE that Complainants, Franklin Township Board of Education, Gloucester City Board of Education, and Lower Township Elementary Board of Education, move before the Council on Local Mandates, for an Order Compelling the above-named Respondents to Fully and Completely Respond to Complainants' discovery requests. Attached herewith is a copy of Complainants' Memorandum of Law in Support of this Motion and accompanying Exhibits.

PARKER McCAY P.A.
Attorneys for Complainants

By: *William C. Morlok*

WILLIAM C. MORLOK

DATED: July 28, 2021

4821-6604-7987, v. 1

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**STATE OF NEW JERSEY
COUNCIL ON LOCAL
MANDATES**

**COLM-0001-21
CONSOLIDATED ACTIONS**

**BRIEF IN SUPPORT OF MOTION
TO COMPEL DISCOVERY**

INTRODUCTION

Complainants, Franklin Township Board of Education, Gloucester City Board of Education, and Lower Township Elementary Board of Education (hereinafter “Complainants”), through its undersigned counsel, file this Memorandum of Law in Support of their Motion before the Council on Local Mandates (“Council”) to Compel Discovery Responses from Senate President Stephen M. Sweeney and Assembly Speaker Craig J. Coughlin (hereinafter “Respondents”).

FACTUAL AND PROCEDURAL BACKGROUND

On June 14, 2021, Complainants served Requests for Production of Documents on Respondents (“Exhibit A”), consistent with the Council’s June 8, 2021 Case Management Order (“Exhibit B”). Through correspondence from their counsel dated June 28, 2021 (“Exhibit C”) and July 9, 2021 (“Exhibit D”), Respondents have asserted legislative immunity in connection with Complainants’ discovery requests, and refuse to respond to same. Complainants did attempt to resolve this matter directly with Respondents, but to no avail (“Exhibit E”).

ARGUMENT

All authority cited in the June 28, 2021 and July 9, 2021 correspondence applies the doctrine of legislative immunity in the context of traditional civil or criminal litigation, as opposed to the review of an alleged unfunded mandate by the Council. The Council’s unique role in reviewing whether a law constitutes an unfunded mandate requires the parties to have all information regarding that law, including documents used in connection with preparation of the legislation. The fact that “rulings of the council ... shall not be subject to judicial review” further demonstrates the inapplicability of traditional civil litigation practices, including the doctrine of legislative immunity, to proceedings before the Council. N.J.S.A. 52:13H-18 (emphasis added).

Moreover, the Rules of Procedure for the Council specifically state that “[a] party may request discovery from another party on motion to the Council and for good cause shown” and “[t]he Council in its discretion may require any party to submit additional information.” Rule 12(b)-(c) (emphasis added).

Additionally, the letter brief Respondents submitted opposing Complainants' request for injunctive relief included the certification of Anthony Cimino, Executive Director of the New Jersey General Assembly Majority, who discussed the "experts, professionals, consultants, and actuaries that have been engaged to advise the Legislature." The certification of Kevin Drennan, Executive Director of the New Jersey General Senate Majority, also discussed those experts and included a letter from three consultants from Milliman, who conducted an analysis in April of 2020, prior to when the initial approved language of Chapter 44 was agreed upon. Accordingly, Respondents "opened the door" to Complainants' Requests for Production of Documents seeking more information regarding Milliman and the "experts, professionals, consultants, and actuaries that have been engaged to advise the Legislature."

If Respondents intend to utilize and rely on these documents as part of their case-in-chief or in motion argument (as addressed below) to argue that Chapter 44 is not an unfunded mandate, then Complainants are entitled to receive copies of same. More specifically, under Rule 12(a), "[a]t least 30 days before a scheduled hearing date or by such other date as the Council may direct, a party must file with the Council any documents or other written information on which it intends to rely at hearing." (emphasis added). Furthermore, a copy of these documents must "be served on all parties to the proceeding..." Rule 12(d).

Here, Respondents have already relied on the requested documents in opposing Complainants' request for injunctive relief ("Exhibit F"). More specifically, Respondents touted the Milliman report as detailing "the substantial cost savings produced by Chapter 44." Exhibit F, Respondents' Brief at 6. They further noted that "passage of Chapter 44 represented the

culmination of years of planning and analysis by key stakeholders and actuarial experts.” Id. at 5. Given that Respondents have already relied on these documents to block Complainants’ request for injunctive relief, it is disingenuous for them to now suggest that they may not be probed and/or the topic of reasonable discovery requests. Accordingly, Complainants are entitled to receive copies of the requested documents.

Because Respondents continue to assert legislative immunity in an attempt to circumvent Complainants’ valid discovery requests, Complainants now seek an Order from the Council requiring Respondents to submit substantive responses to same, pursuant to Rule 12.

CONCLUSION

For all of the foregoing reasons, Complainants respectfully requests that the Council enter an order compelling Respondents to fully and completely respond to Complainants’ discovery requests.

PARKER McCAY P.A.
Attorneys for Complainants

By: William C. Morlok

WILLIAM C. MORLOK

DATED: July 28, 2021

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CONSOLIDATED ACTIONS**

**CERTIFICATION OF COUNSEL
IN SUPPORT OF MOTION TO
COMPEL DISCOVERY**

I, William C. Morlok, hereby certify as follows:

1. I am an attorney at law in the State of New Jersey and associated with Parker McCay P.A., counsel for Complainants, Franklin Township Board of Education, Gloucester City Board of Education, and Lower Township Elementary Board of Education. As such, I am fully familiar with the facts and circumstances set forth herein.

2. Exhibit A is a true and correct copy of the Requests for Production of Documents that Complainants served on Respondents on June 14, 2021

3. Exhibit B is a true and correct copy of the Council's June 8, 2021 Case Management Order.

4. Exhibit C is a true and correct copy of the June 28, 2021 correspondence sent by Respondents' counsel to Complainants' counsel.

5. Exhibit D is a true and correct copy of the July 9, 2021 correspondence sent by Respondents' counsel to Complainants' counsel.

6. Exhibit E is a true and correct copy of the July 6, 2021 correspondence sent by Complainants' counsel to Respondents' counsel.

7. Exhibit F is a true and correct copy of the April 23rd, 2021 Answer sent by Respondents' counsel to Judge Sweeney and Complainants' counsel.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

PARKER McCAY P.A.
Attorneys for Complainants

By: William C. Morlok

WILLIAM C. MORLOK

DATED: July 28, 2021

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COUNCIL ON LOCAL MANDATES**

**COLM-0001-21 CONSOLIDATED
ACTIONS**

CERTIFICATION OF SERVICE

I, Liah Agouras of full age, hereby certify as follows:

I am employed by the law firm of Parker McCay P.A., attorneys for Gloucester City Board of Education, Franklin Township Board of Education, and Lower Township Elementary Board of Education and on July 28, 2021, the original and two copies of Complainants' Motion to Compel Discovery in the above captioned matter was sent via email and 2 Day FedEx Mail to:

State of New Jersey
Council on Local Mandates
140 East Front Street, 8th Floor
Trenton, NJ 08625
filings-clmand@treas.state.nj.us

Via email and certified mail to:

The Honorable John A. Sweeney, J.S.C. (Ret.)
Chair, Council on Local Mandates
200 East Eighth Street
Florence, NJ 08518
jsweeneylaw@comcast.net

A copy of the within was also sent to the following via email:

Leon Sokol, Esquire
Attorney for Respondents
Senate President Stephen M. Sweeney
and Assembly Speaker Craig J. Coughlin
LSokol@cullenllp.com

Jaclyn Frey
Deputy Attorney General
Jaclyn.Frey@law.njoag.gov

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ *Liah Agouras*

Liah Agouras

Date: July 28, 2021

4830-8893-0036, v. 1

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STATE OF NEW JERSEY
COUNCIL ON LOCAL
MANDATES

COLM-0001-21
CONSOLIDATED ACTIONS

PROPOSED ORDER

AND NOW, this ____ day of _____ 2021, upon
consideration of Complainants' Motion to Compel Discovery and any response thereto, it is
hereby **ORDERED** that Complainants' Motion is **GRANTED**; and

IT IS FURTHER ORDERED that Respondents shall fully and completely respond to
Complainants' discovery requests within fourteen (14) days.

The Honorable John A. Sweeney, A.J.S.C. (Ret.)
Chairman, Council on Local Mandates

EXHIBIT C

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**STATE OF NEW JERSEY
COUNCIL ON LOCAL
MANDATES**

**COLM-0001-21
CONSOLIDATED ACTIONS**

**REQUESTS FOR PRODUCTION
OF DOCUMENTS**

TO: Leon J. Sokol, Esquire
lsokol@cullenllp.com
Attorney for Respondents, Senate President Stephen M. Sweeney and Assembly Speaker
Craig J. Coughlin

PLEASE TAKE NOTICE that Complainants, Franklin Township Board of Education,
Gloucester City Board of Education, and Lower Township Elementary Board of Education,
request that the above named Respondents produce the documents stated below by July 2, 2021,
as required by the Council's Orders.

PARKER McCAY P.A.
Attorneys for Complainants

By: William C. Morlok

WILLIAM C. MORLOK

DATED: June 14, 2021

INSTRUCTIONS

1. In producing the documents designated below, you are requested to furnish all documents known or available to you, regardless of whether a document is currently in your possession, custody, or control, or that of your attorneys, employees, agents, investigators, or other representatives, or is otherwise available to you.

2. If, for any reason, you are unable to produce in full any document requested:
 - a. Produce each such document to the fullest extent possible;
 - b. Specify the reasons for your inability to produce the remainder; and
 - c. State in detail whatever information, knowledge, or belief you have concerning the whereabouts and substance of each document not produced in full.

3. If any document requested was at one time in existence, but is no longer in existence, please state for each document as to which that is the case:
 - a. The type of document;
 - b. The types of information contained therein;
 - c. The date upon which it ceased to exist;
 - d. The circumstances under which it ceased to exist;
 - e. The identity of all persons having knowledge of the circumstances under which it ceased to exist; and
 - f. The identity of all persons having knowledge or who had knowledge of the contents thereof.

4. For each document requested which you are unable to produce and which was at any time in your possession, custody, or control, or to which you had access at any time, specify in detail:

- a. The nature of the document (i.e. letter, memorandum, etc.);
- b. The author of the document;
- c. All recipients of the document and any copy thereof;
- d. A summary of the information contained in the document;
- e. The date on which you lost, relinquished, or otherwise ceased to have possession, custody, control of, or access to the document;
- f. Identify all persons having knowledge of the circumstances whereby you lost, relinquished, or otherwise ceased to have possession, custody, or control of, or access to the document; and
- g. Identify all persons who have or have had knowledge of the contents of the document, if full or in part.

5. In the event you seek to withhold or do withhold any document, in whole or in part, on the basis that it is not subject to discovery, produce a list of all, such documents and, as to each such document, state:

- a. The name of each author, writer, sender or initiator of each such document;
- b. The name of each recipient, addressee or party to whom such document was intended to be sent;
- c. The name of each and every person who received a copy of the document;
- d. The date of the document or, if no date appears on the document, the date the document was prepared;
- e. The title of the document, or if it has no title, then such other

description of the document and its subject matter as shall be sufficient to identify the document; and

f. The grounds claimed for withholding the document from discovery and the factual basis for such a claim.

6. As to each document produced, you are requested to designate the paragraph and subparagraph of this request to which each such document is responsive.

7. Please provide all electronically generated and stored data, including emails in native format.

8. This Request is a continuing one, and requires that you produce all responsive documents and tangible objects whenever you obtain or become aware of them, even if they are not in your possession or available to you on the date you first produce documents pursuant to this Request.

DEFINITIONS

As used herein, the following terms shall have the meanings indicated below:

a. “Respondents”, “you”, and “your” refer to the above addressed Respondents and any authorized agent(s), attorney(s) or person(s) acting on their behalf.

b. “Person” means natural persons, corporations, partnerships, sole partnerships, firms, proprietorships, unions, associations, federations, or any other kind of entity.

c. “Document” means any written, printed, typewritten, handwritten, or otherwise recorded matter of whatever character, including but not limited to files, correspondence, contracts, agreements, text messages, emails, social media, tables, charts, analyses, graph, schedule, letters, purchase orders, memoranda, telegrams, notes, forms, lists catalogues,

brochures, messages (including but not limited to reports of telephone conversations and conferences), diaries, reports, calendars, interoffice communications, statements, jottings, announcements, depositions, studies, books, circulars, bulletins, instruction, papers, files, minutes affidavits, negotiable instruments, photographs, tape or video recordings, motion pictures and any carbon or photographic copies of any such material if Petitioner does not have custody or control of the original.

d. “Communication” means any oral or written transmission of information, the information transmitted, and any process by which information is transmitted, and shall include, without limitation, all statements, including but not limited to, written statements signed or otherwise adopted or approved by the person making it, verbal or oral statements, and stenographic, mechanical, or electrical recordings or transcriptions; admissions; denials; inquiries; discussions; conversations, including, but not limited to, telephone conversations, face-to-face conversations, meetings, visits, conferences, and all documents memorializing, evidencing, or relating to same; correspondence of any type, including, without limitation, letters, facsimiles, e-mail, texts, application/web based communications (such as WhatsApp, Snapchat, Facebook messenger, and the like) or other electronic correspondence; notes; records; and any other written, oral, electronic, and mechanical transmittal of information or other kind of exchange between two or more persons.

e. “Identify” means, with respect to documents, (1) the author thereof and the person or persons to whom the document was originally directed; (2) the source from whom Petitioner obtained such document or documents; (3) the date of each such document or documents; (4) the current custodian of each such document or documents; (5) the location at which the document

is situated; and (6) the subject matter of each such document or documents. “Identify” means when used in reference to:

(1) a document, to state separately (i) its description (e.g., letter, report, memorandum, etc.), (ii) its date, (iii) its subject matter, (iv) the identity of each author or signer, (v) its present location and the identity of its custodian;

(2) an oral statement, communication, conference or conversation, to state separately (i) its date and the place where it occurred, (ii) its substance, (iii) the identity of each person participating in the communication or conversation; and (iv) the identity of all notes, memoranda or other documents memorializing, referring or relating to the subject matter of the statement;

(3) a natural person or persons, to state separately (i) the full name of each such person, (ii) his or her present, or last known, business address and his or her present, or last known, residential address, and (iii) the employer of the person at the time to which the interrogatory answer is directed and the person’s title or positions at that time;

(4) an organization or entity other than a natural person (e.g., a company, corporation, firm, association, or partnership), to state separately (i) the full name and type of organization or entity, (ii) the address of each of its principal places of business, and (iii) the nature of the business conducted.

f. “Chapter 44” means P.L.2020, c.44, which was enacted on July 1, 2020, as well as any and all drafts of P.L.2020, c.44 existing between January 1, 2018 and July 1, 2020.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Please produce any and all studies, surveys, and/or reports commissioned and/or relied on by Respondents regarding Chapter 44. This includes any and all studies, surveys, and/or reports commissioned and/or relied on by Respondents after the enactment of Chapter 44 on July 1, 2020 to the present.

Answer:

2. Please produce any and all information submitted to Respondents by any and all Boards of Education throughout New Jersey regarding the fiscal impact of Chapter 44.

Answer:

3. Please produce any and all correspondence regarding Chapter 44, between Respondents and anyone associated with Milliman from January 1, 2018 to the present.

Answer:

4. Please produce any and all correspondence regarding Chapter 44, between Respondents and representatives of the New Jersey Education Association from January 1, 2018 to the present.

Answer:

CERTIFICATION

I hereby certify that I have reviewed the document production request and that I have made or caused to be made a good faith search for documents responsive to the request. I further certify that as of this date, to the best of my knowledge and information, the production is complete and accurate based on my personal knowledge and/or information provided by others. I acknowledge my continuing obligation to make a good faith effort to identify additional documents that are responsive to the request and to promptly serve a supplemental written response and production of such documents, as appropriate, as I become aware of them.

DATED: _____

EXHIBIT D

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**STATE OF NEW JERSEY
COUNCIL ON LOCAL
MANDATES**

**COLM-0001-21
CONSOLIDATED ACTIONS**

CASE MANAGEMENT ORDER

WHEREAS the parties circulated the below proposed Case Management dates on June 4, 2021 and emailed the Honorable John A. Sweeney, A.J.S.C. (Ret.) regarding the same, and without hearing any objection or opposition;

IT IS on this 8th day of June, 2021 ORDERED that the above referenced matter shall proceed as follows:

1. All discovery requests shall be served by June 14, 2021;
2. Responses to discovery requests shall be served by July 2, 2021;
3. Dispositive Motions shall be filed by July 19, 2021;
4. Amicus briefs shall be filed by August 2, 2021;

5. Opposition to Dispositive Motions shall be filed by August 11, 2021;
6. Replies to Opposition shall be filed by August 20, 2021;
7. Oral Argument regarding Dispositive Motions shall be in September of 2021,
on a date to be determined by the Council.

A handwritten signature in black ink, appearing to read "J. Sweeney". The signature is fluid and cursive, with a large initial "J" and "S".

The Honorable John A. Sweeney, A.J.S.C. (Ret.)
Chairman, Council on Local Mandates

EXHIBIT E

June 28, 2021

Via email and regular mail
wmorlok@parkermccay.com

William C. Morlok, Esq.
Parker McKay
9000 Midlantic Drive, Suite 300
P.O. Box 5054
Mount Laurel, NJ 08054

RE: In re Complaint Filed by the Franklin Township Board of Education
Regarding P.L. 2020, Chapter 44

In re Complaint Filed by the Gloucester City Board of Education
Regarding P.L. 2020, Chapter 44

In re Complaint Filed by the Lower Township Elementary Board of Education
Regarding P.L. 2020, Chapter 44

COLM-0001-21 (Consolidated Action)

Dear Mr. Morlok:

As you know, this office represents Respondents Senate President Stephen M. Sweeney and Assembly Speaker Craig J. Coughlin (hereafter collectively “the Presiding Officers”) in the above-captioned consolidated action. This letter constitutes the Presiding Officers’ response and objections to Claimants’ document requests dated June 14, 2021.

Claimants’ document requests directed to the Presiding Officers consist of the following:

1. Please produce any and all studies, surveys, and/or reports commissioned and/or relied on by Respondents regarding Chapter 44. This includes any and all studies, surveys, and/or reports commissioned and/or relied on by Respondents after the enactment of Chapter 44 on July 1, 2020 to the present.

2. Please produce any and all information submitted to Respondents by any and all Boards of Education throughout New Jersey regarding the fiscal impact of Chapter 44.

3. Please produce any and all correspondence regarding Chapter 44, between Respondents and anyone associated with Milliman from January 1, 2018 to the present.

4. Please produce any and all correspondence regarding Chapter 44, between Respondents and representatives of the New Jersey Education Association from January 1, 2018 to the present.

Please be advised that the Presiding Officers – as members of the Legislature – are subject to complete legislative immunity from discovery in civil litigation pursuant to Article IV, section 9 paragraph 4 of the New Jersey Constitution (hereafter “the Speech or Debate Clause”). Because of this legislative immunity, the Presiding Officers will not be producing any documents in response to your Document Request.

In this letter we briefly set forth the basis for our assertion of legislative immunity in connection with your Document Request.

The Speech or Debate Clause of the New Jersey Constitution provides that:

Members of the Senate and General Assembly shall, in all cases except for treason and high misdemeanor, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same; and for any statement, speech or debate in either house or at any meeting of a legislative committee, they shall not be questioned in any other place.

[N.J. Const. art. IV, § 4, ¶ 9.]

As the Appellate Division has observed, “legislative immunity guaranteed by the Speech or Debate Clause assures that the speech and conduct of legislators acting within the sphere of legitimate

legislative activity will not be made the basis for a civil judgment.” Teamsters Local 97 v. State, 434 N.J. Super. 393, 428 (App. Div. 2014) (citing Gilbert v. Gladden, 87 N.J. 275, 292-93, (Pashman, J., and Schreiber, J., dissenting) (using the United States Supreme Court's interpretation of the Federal Speech and Debate Clause in analyzing New Jersey's Speech or Debate Clause).

The protections afforded by the Clause are sweeping: legislative immunity “protect[s] legislators not only from the results of criminal and civil litigation, but also from the burden of defending themselves.” State v. Gregorio, 186 N.J. Super. 138, 151–52 (Law. Div. 1982) (citing Dombrowski v. Eastland, 387 U.S. 82, 85 (1967)). Moreover, because the Speech or Debate Clause “is a function of the separation of powers designed to preserve the constitutional structure of separate, coequal, and independent branches of government, the ordinary rules for waiver such as intentional relinquishment or abandonment of a known right or privilege do not apply.” State v. Twp. of Lyndhurst, 278 N.J. Super. 192, 200 (Ch. Div. 1994) (citing United States v. Helstoski, 442 U.S. 477, 489-92 (1979); Johnson v. Zerbst, 304 U.S. 458, 464 (1938)).

Hence, discovery in private civil litigation -- seeking to compel production of documents used in connection with the preparation of legislation -- is precluded under the broad grant of legislative immunity. This is so because “a private civil action, ... creates a distraction and forces [legislators] to divert their time, energy, and attention from their legislative tasks to defend the litigation.” Eastland v. U. S. Servicemen's Fund, 421 U.S. 491, 503 (1975). See Brown & Williamson Tobacco Corp. v. Williams, 62 F.3d 408, 421 (D.C. Cir. 1995) (holding that “[a] party is no more entitled to compel congressional testimony -- **or production of documents** -- than it is to sue congressmen”); United States v. Rayburn House Office Bldg., 497 F.3d 654, 660 (D.C. Cir. 2007) (holding that “a key purpose of the privilege is to prevent intrusions in the legislative process and that the legislative

process is disrupted by the disclosure of legislative material, regardless of the use to which the disclosed materials are put. **The bar on compelled disclosure is absolute.**”) (citing Eastland, 421 U.S. at 503) (emphasis added).

In a 2020 Law Division decision involving an OPRA request made to the New Jersey Senate, Judge Jacobson principally considered and applied a statutory exemption from OPRA disclosure (known as the “legislative records exemption” authorized by N.J.S.A. 47:1A-1.1) as a ground for denying the plaintiff’s OPRA request for legislative documents. However, the Judge also considered the application of legislative immunity conferred by the Speech or Debate Clause – in light of the fact that the plaintiff in that case *also* sought ancillary litigation discovery in addition to the OPRA request itself. (Such ancillary litigation discovery would not be literally subject to the statutory OPRA exclusion under N.J.S.A. 47:1A-1.1 -- since the discovery request arises under the Court Rules rather than under OPRA). As to this ancillary litigation discovery request, the Judge Jacobson held:

There's not much case law on the Speech and Debate Clause in the New Jersey Constitution and it's close to the wording of the Speech and Debate Clause in the United States Constitution.... There was a case State v. Lyndhurst, 278 New Jersey, Super. 192, a Chancery Division case from 1994, and it did discuss the United States Supreme Court cases... And [the] U.S. Supreme Court case has ... held that **legislative privilege prevents discovery into legislative activities**... And so there is a legislative privilege that also would have barred -- likely barred the discovery here and supports the Court's ruling in that regard.

But the -- you know, the main -- the main issue for decisions here is whether the documents requested by plaintiff fall within [the statutory] legislative records exemption [under OPRA].

[Komuves v. NJEFPWG, New Jersey Superior Court, Law Division, Mercer County, Docket No. L-421-20, Decision of Judge Jacobson granting the New Jersey Senate’s Motion to Dismiss, July 9, 2020, at 20-21 (emphasis added)]¹

¹ A copy of Judge Jacobson’s decision in Komuves v. NJEFPWG is attached as Exhibit “A” to this letter.

For the foregoing reasons, legislative immunity conferred by the Speech or Debate Clause precludes any response by the Presiding Officers to documents sought in connection with your Document Request.

In the alternative, the Presiding Officers also assert privilege arising under the common law Deliberative Process Privilege. That Privilege bars the “disclosure of proposed policies before they have been fully vetted and adopted by a government agency,” thereby ensuring that an agency is not judged by a policy that was merely considered. Education Law Center v. N.J. Dept. of Education, 198 N.J. 274, 286 (2009). The Privilege also “avoids the confusion that could result from the release of information concerning matters that do not bear on an agency’s chosen course.” Ciesla v. N.J. Dept. of Health & Senior Services, 429 N.J. Super. 127, 138 (App. Div. 2012). The scope of the Deliberative Process Privilege extends to “documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which [its] decisions and policies are formulated.” In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 83 (2000). Plainly, all non-public documents of the Legislature are protected by the Deliberative Process Privilege as well as by legislative immunity conferred by the Speech or Debate Clause.

The Presiding Officers already have disclosed to you the following *public* legislative documents: (1) of the Statement of the Assembly Appropriations Committee dated June 26, 2020 regarding S. 2273 (later enacted as L. 2020, c. 44) (annexed to the Certification of Leon J. Sokol, Esq., dated April 23, 2021 in opposition to Claimants’ application for preliminary injunctive relief); and (2) report of the Milliman actuarial firm dated April 21, 2021 ((annexed to the Certification of Kevin Drennan dated April 22, 2021 in opposition to Claimants’ application for preliminary

injunctive relief). The foregoing public documents of the Legislature (previously provided to you) are responsive to your Document Request. All other potentially responsive documents of the Legislature are subject to the absolute protection from disclosure under legislative immunity conferred by the Speech or Debate Clause and are subject to the privilege afforded by the Deliberative Process Privilege.

Please be guided accordingly.

Very Truly Yours,

Cullen and Dykman LLP
Attorneys for Respondents Senate President
Stephen M. Sweeney and Assembly Speaker
Craig J. Coughlin

By: /s/ Leon J. Sokol
Leon J. Sokol

cc: Jaclyn Frey, DAG
Office of the Attorney General (via email)
Jaclyn.Frey@law.njoag.gov

Sheila Murugan, Esq.
Zazzali, Fagella, Nowak, Kleinbaum & Friedman
Attorneys for *amicus* NJEA (via email)
smurugan@zazzali-law.com

EXHIBIT A

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MERCER COUNTY
DOCKET NO. L-421-20
A.D.# _____

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FLAVIO KOMUVES,)
)
Plaintiff,)
)
vs.)
)
NEW JERSEY ECONOMIC & FISCAL)
POLICY WORK GROUP, D/B/A PATH)
TO PROGRESS NJ AND ALISON)
ACCETTOLA, CUSTODIAN OF)
RECORDS,)
)
Defendant.)

TRANSCRIPT
OF
DECISION

Place: Mercer County
(Heard Via Zoom)

Date: July 9, 2020

BEFORE:

HONORABLE MARY C. JACOBSON, J.S.C.

TRANSCRIPT ORDERED BY:

LEON J. SOKOL, ESQ. (Cullen and Dykman)

Transcriber, Sherry M. Bachmann
G&L TRANSCRIPTION OF NJ
40 Evans Place
Pompton Plains, New Jersey 07444
www.gltranscripts nj.com
transcripts@gltranscripts nj.com

Sound Recorded
Recording Operator,

1 attorney/client privilege, the legislative privilege is
2 absolute. And so a need for documents is not enough,
3 which is clear in HAWKINS V. HARRIS, 141 N.J. 207, New
4 Jersey Supreme Court case from 1995.

5 There's not much case law on the Speech and
6 Debate Clause in the New Jersey Constitution and it's
7 close to the wording of the Speech and Debate Clause in
8 the United States Constitution. But the New Jersey
9 Constitution extends the protection to any statements
10 at any meeting of a legislative committee and the
11 Congress Speech and Debate Clause provides that for any
12 speech or debate, in either, as the members of Congress
13 shall not be questioned in any other place.

14 And there is a Law Review article that
15 discusses legislative privilege, it's called the
16 neglected value of the legislative privilege in State
17 legislators, 45 (indiscernible) Law Review at Page 221
18 from 2003.

19 There was a case that was cited in the papers
20 I reviewed, STATE V. ANGELA LYNDHURST, 278 New Jersey
21 Super. 192, a Chancery Division case from 1994, and it
22 did discuss the United States Supreme Court cases and
23 it's one of the few cases that mentioned the New Jersey
24 Speech or Debate Laws.

25 And U.S. Supreme Court case has -- has held

1 that legislative privilege prevents discovery into
2 legislative activities, which arose in SUPREME COURT OF
3 VIRGINIA V. CONSUMERS UNION OF THE UNITED STATES, 446
4 U.S. 710 from 1980. And so there is a legislative
5 privilege that also would have barred -- likely barred
6 the discovery here and supports the Court's ruling in
7 that regard.

8 But the -- you know, the main -- the main
9 issue for decisions here is whether the documents
10 requested by plaintiff fall within legislative records
11 exemption. I mentioned earlier that the exemption is
12 broadly written to cover any memorandum,
13 correspondence, notes, report, or other communication
14 and then, here, is the language that has been disputed
15 by the parties, prepared by or for the specific use of
16 a member of the Legislature in the course of the
17 member's official duties, except that this provision
18 shall not apply to an otherwise publicly accessible
19 report, which is required by law to be submitted to the
20 Legislature or its members.

21 So this Court used the exemption as a
22 broadline, broader than the plaintiff argues, and that
23 the language prepared by or for the specific use of a
24 member of the Legislature, to me, it means that
25 prepared by anyone. If there isn't any limitation on

EXHIBIT F

July 9, 2021

Via email and regular mail
wmorlok@parkermccay.comWilliam C. Morlok, Esq.
Parker McKay
9000 Midlantic Drive, Suite 300
P.O. Box 5054
Mount Laurel, NJ 08054**RE: In re Complaint Filed by the Franklin Township Board of Education**
Regarding P.L. 2020, Chapter 44**In re Complaint Filed by the Gloucester City Board of Education**
Regarding P.L. 2020, Chapter 44**In re Complaint Filed by the Lower Township Elementary Board of Education**
Regarding P.L. 2020, Chapter 44**COLM-0001-21 (Consolidated Action)**

Dear Mr. Morlok:

As you know, this office represents Respondents Senate President Stephen M. Sweeney and Assembly Speaker Craig J. Coughlin (hereafter collectively “the Presiding Officers”) in the above-captioned consolidated action. I am in receipt of your letter dated July 6, 2021 in which you reject the Presiding Officers’ assertion of legislative immunity (by my letter dated June 28, 2021) in connection with Claimants’ document requests dated June 14, 2021. For ease of reference, a copy of my letter of June 28, 2021 is attached to this letter. See Attachment “A”.

By your letter of July 6 you concede that that the Presiding Officers may properly assert legislative immunity in any civil or criminal proceeding. However, you contend that the legislative

immunity is somehow inapplicable in a proceeding before the Council on Local Mandates (“Council”). For several reasons your contention is rejected.

First, contrary to your contention, the scope of legislative immunity extends to all types of proceedings. As more fully discussed in my letter of June 28, legislative immunity is conferred by article IV, section 9 paragraph 4 of the New Jersey Constitution (hereafter “the Speech or Debate Clause”). The Clause provides:

Members of the Senate and General Assembly shall, in all cases except for treason and high misdemeanor, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same; and for any statement, speech or debate in either house or at any meeting of a legislative committee, they shall not be questioned **in any other place**.

[N.J. Const. art. IV, § 4, ¶ 9 (emphasis added).]

Note the above language placed in boldface. By its terms, the legislative immunity conferred by the Speech or Debate Clause admits of no exception for any particular type of forum or proceeding. Thus, the preclusionary effect of the Clause applies just as much to the proceedings before the Council as it does to civil or criminal judicial proceedings.

Second, nothing in the Unfunded Mandate Amendment of the New Jersey Constitution modifies or amends the scope of application of the Speech or Debate Clause. See N.J. Const. art. VIII, § 2, ¶ 5. Indeed, the Unfunded Mandate Amendment mentions not one word regarding the sweeping legislative immunity conferred by the Speech or Debate Clause. In light of this, there is no basis whatsoever that would support your apparent contention that a conflict exists as between the Unfunded Mandate Amendment and the Speech or Debate Clause – let alone to contend that the former takes precedence over the latter. There being no conflict whatsoever between the Unfunded Mandate Amendment and the Speech or Debate Clause, each constitutional provision must be given

effect in accordance with its terms. Applying the Speech or Debate Clause, the Presiding Officers are subject to complete legislative immunity in this proceeding.

Third, the constitutional scheme underlying the Unfunded Mandate Amendment and the Local Mandate Act did not even contemplate that the Senate President or the Assembly Speaker could be direct parties to a Council proceeding. Although the Rules of the Council do allow the Presiding Officers to be Respondents if they so choose (which is what occurred in this case), the participation of these Officers in a Council proceeding is by no means intrinsic to the constitutional or statutory scheme. That fact further undercuts your argument that legislative immunity conferred by the Speech or Debate Clause was somehow modified or limited by the Unfunded Mandate Amendment.

For these reasons (as well as for the other and further reasons set forth in my letter of June 28), legislative immunity conferred by the Speech or Debate Clause precludes any response by the Presiding Officers to documents sought in connection with your Document Request.

Please be guided accordingly.

Very Truly Yours,

Cullen and Dykman LLP
Attorneys for Respondents Senate President
Stephen M. Sweeney and Assembly Speaker
Craig J. Coughlin

By: /s/ Leon J. Sokol
Leon J. Sokol

cc: Jaclyn Frey, DAG
Office of the Attorney General (via email)
Jaclyn.Frey@law.njoag.gov

William C. Morlok, Esq.

July 9, 2021
Page 4

Sheila Murugan, Esq.
Zazzali, Fagella, Nowak, Kleinbaum & Friedman
Attorneys for *amicus* NJEA (via email)
smurugan@zazzali-law.com

ATTACHMENT “A”

June 28, 2021

Via email and regular mail
fcavallo@parkermccay.com

William C. Morlok, Esq.
Parker McKay
9000 Midlantic Drive, Suite 300
P.O. Box 5054
Mount Laurel, NJ 08054

RE: In re Complaint Filed by the Franklin Township Board of Education
Regarding P.L. 2020, Chapter 44

In re Complaint Filed by the Gloucester City Board of Education
Regarding P.L. 2020, Chapter 44

In re Complaint Filed by the Lower Township Elementary Board of Education
Regarding P.L. 2020, Chapter 44

COLM-0001-21 (Consolidated Action)

Dear Mr. Morlok:

As you know, this office represents Respondents Senate President Stephen M. Sweeney and Assembly Speaker Craig J. Coughlin (hereafter collectively “the Presiding Officers”) in the above-captioned consolidated action. This letter constitutes the Presiding Officers’ response and objections to Claimants’ document requests dated June 14, 2021.

Claimants’ document requests directed to the Presiding Officers consist of the following:

1. Please produce any and all studies, surveys, and/or reports commissioned and/or relied on by Respondents regarding Chapter 44. This includes any and all studies, surveys, and/or reports commissioned and/or relied on by Respondents after the enactment of Chapter 44 on July 1, 2020 to the present.

2. Please produce any and all information submitted to Respondents by any and all Boards of Education throughout New Jersey regarding the fiscal impact of Chapter 44.

3. Please produce any and all correspondence regarding Chapter 44, between Respondents and anyone associated with Milliman from January 1, 2018 to the present.

4. Please produce any and all correspondence regarding Chapter 44, between Respondents and representatives of the New Jersey Education Association from January 1, 2018 to the present.

Please be advised that the Presiding Officers – as members of the Legislature – are subject to complete legislative immunity from discovery in civil litigation pursuant to Article IV, section 9 paragraph 4 of the New Jersey Constitution (hereafter “the Speech or Debate Clause”). Because of this legislative immunity, the Presiding Officers will not be producing any documents in response to your Document Request.

In this letter we briefly set forth the basis for our assertion of legislative immunity in connection with your Document Request.

The Speech or Debate Clause of the New Jersey Constitution provides that:

Members of the Senate and General Assembly shall, in all cases except for treason and high misdemeanor, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same; and for any statement, speech or debate in either house or at any meeting of a legislative committee, they shall not be questioned in any other place.

[N.J. Const. art. IV, § 4, ¶ 9.]

As the Appellate Division has observed, “legislative immunity guaranteed by the Speech or Debate Clause assures that the speech and conduct of legislators acting within the sphere of legitimate

legislative activity will not be made the basis for a civil judgment.” Teamsters Local 97 v. State, 434 N.J. Super. 393, 428 (App. Div. 2014) (citing Gilbert v. Gladden, 87 N.J. 275, 292-93, (Pashman, J., and Schreiber, J., dissenting) (using the United States Supreme Court's interpretation of the Federal Speech and Debate Clause in analyzing New Jersey's Speech or Debate Clause).

The protections afforded by the Clause are sweeping: legislative immunity “protect[s] legislators not only from the results of criminal and civil litigation, but also from the burden of defending themselves.” State v. Gregorio, 186 N.J. Super. 138, 151–52 (Law. Div. 1982) (citing Dombrowski v. Eastland, 387 U.S. 82, 85 (1967)). Moreover, because the Speech or Debate Clause “is a function of the separation of powers designed to preserve the constitutional structure of separate, coequal, and independent branches of government, the ordinary rules for waiver such as intentional relinquishment or abandonment of a known right or privilege do not apply.” State v. Twp. of Lyndhurst, 278 N.J. Super. 192, 200 (Ch. Div. 1994) (citing United States v. Helstoski, 442 U.S. 477, 489-92 (1979); Johnson v. Zerbst, 304 U.S. 458, 464 (1938)).

Hence, discovery in private civil litigation -- seeking to compel production of documents used in connection with the preparation of legislation -- is precluded under the broad grant of legislative immunity. This is so because “a private civil action, ... creates a distraction and forces [legislators] to divert their time, energy, and attention from their legislative tasks to defend the litigation.” Eastland v. U. S. Servicemen's Fund, 421 U.S. 491, 503 (1975). See Brown & Williamson Tobacco Corp. v. Williams, 62 F.3d 408, 421 (D.C. Cir. 1995) (holding that “[a] party is no more entitled to compel congressional testimony -- **or production of documents** -- than it is to sue congressmen”); United States v. Rayburn House Office Bldg., 497 F.3d 654, 660 (D.C. Cir. 2007) (holding that “a key purpose of the privilege is to prevent intrusions in the legislative process and that the legislative

process is disrupted by the disclosure of legislative material, regardless of the use to which the disclosed materials are put. **The bar on compelled disclosure is absolute.**”) (citing Eastland, 421 U.S. at 503) (emphasis added).

In a 2020 Law Division decision involving an OPRA request made to the New Jersey Senate, Judge Jacobson principally considered and applied a statutory exemption from OPRA disclosure (known as the “legislative records exemption” authorized by N.J.S.A. 47:1A-1.1) as a ground for denying the plaintiff’s OPRA request for legislative documents. However, the Judge also considered the application of legislative immunity conferred by the Speech or Debate Clause – in light of the fact that the plaintiff in that case *also* sought ancillary litigation discovery in addition to the OPRA request itself. (Such ancillary litigation discovery would not be literally subject to the statutory OPRA exclusion under N.J.S.A. 47:1A-1.1 -- since the discovery request arises under the Court Rules rather than under OPRA). As to this ancillary litigation discovery request, the Judge Jacobson held:

There's not much case law on the Speech and Debate Clause in the New Jersey Constitution and it's close to the wording of the Speech and Debate Clause in the United States Constitution.... There was a case State v. Lyndhurst, 278 New Jersey, Super. 192, a Chancery Division case from 1994, and it did discuss the United States Supreme Court cases... And [the] U.S. Supreme Court case has ... held that **legislative privilege prevents discovery into legislative activities**... And so there is a legislative privilege that also would have barred -- likely barred the discovery here and supports the Court's ruling in that regard.

But the -- you know, the main -- the main issue for decisions here is whether the documents requested by plaintiff fall within [the statutory] legislative records exemption [under OPRA].

[Komuves v. NJEFPWG, New Jersey Superior Court, Law Division, Mercer County, Docket No. L-421-20, Decision of Judge Jacobson granting the New Jersey Senate’s Motion to Dismiss, July 9, 2020, at 20-21 (emphasis added)]¹

¹ A copy of Judge Jacobson’s decision in Komuves v. NJEFPWG is attached as Exhibit “A” to this letter.

For the foregoing reasons, legislative immunity conferred by the Speech or Debate Clause precludes any response by the Presiding Officers to documents sought in connection with your Document Request.

In the alternative, the Presiding Officers also assert privilege arising under the common law Deliberative Process Privilege. That Privilege bars the “disclosure of proposed policies before they have been fully vetted and adopted by a government agency,” thereby ensuring that an agency is not judged by a policy that was merely considered. Education Law Center v. N.J. Dept. of Education, 198 N.J. 274, 286 (2009). The Privilege also “avoids the confusion that could result from the release of information concerning matters that do not bear on an agency’s chosen course.” Ciesla v. N.J. Dept. of Health & Senior Services, 429 N.J. Super. 127, 138 (App. Div. 2012). The scope of the Deliberative Process Privilege extends to “documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which [its] decisions and policies are formulated.” In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 83 (2000). Plainly, all non-public documents of the Legislature are protected by the Deliberative Process Privilege as well as by legislative immunity conferred by the Speech or Debate Clause.

The Presiding Officers already have disclosed to you the following *public* legislative documents: (1) of the Statement of the Assembly Appropriations Committee dated June 26, 2020 regarding S. 2273 (later enacted as L. 2020, c. 44) (annexed to the Certification of Leon J. Sokol, Esq., dated April 23, 2021 in opposition to Claimants’ application for preliminary injunctive relief); and (2) report of the Milliman actuarial firm dated April 21, 2021 ((annexed to the Certification of Kevin Drennan dated April 22, 2021 in opposition to Claimants’ application for preliminary

injunctive relief). The foregoing public documents of the Legislature (previously provided to you) are responsive to your Document Request. All other potentially responsive documents of the Legislature are subject to the absolute protection from disclosure under legislative immunity conferred by the Speech or Debate Clause and are subject to the privilege afforded by the Deliberative Process Privilege.

Please be guided accordingly.

Very Truly Yours,

Cullen and Dykman LLP
Attorneys for Respondents Senate President
Stephen M. Sweeney and Assembly Speaker
Craig J. Coughlin

By: /s/ Leon J. Sokol
Leon J. Sokol

cc: Jaclyn Frey, DAG
Office of the Attorney General (via email)
Jaclyn.Frey@law.njoag.gov

Sheila Murugan, Esq.
Zazzali, Fagella, Nowak, Kleinbaum & Friedman
Attorneys for *amicus* NJEA (via email)
smurugan@zazzali-law.com

EXHIBIT G



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wmorlok@parkermccay.com

July 6, 2021

File No. 12160-87

VIA ELECTRONIC MAIL ONLY

Leon Sokol, Esquire
Cullen & Dykman LLP
433 Hackensack Avenue
Hackensack, NJ 07601
lsokol@cullenllp.com

Re: In re Chapter 44 Complaints (COLM-0001-21)

Dear Mr. Sokol:

As you know, this firm represents the Franklin Township Board of Education, the Gloucester City Board of Education, and the Lower Township Elementary Board of Education (collectively, “Complainants”) in the above-referenced matter. I am in receipt of your June 28, 2021 correspondence asserting Senate President Stephen M. Sweeney and Assembly Speaker Craig J. Coughlin’s (collectively, “Respondents”) legislative immunity in connection with Complainants’ discovery requests, and I write now in reply.

All authority cited in your June 28, 2021 correspondence applies the doctrine of legislative immunity in the context of traditional civil or criminal litigation, as opposed to the review of an alleged unfunded mandate by the Council on Local Mandates (“Council”). The Council’s unique role in reviewing whether a law constitutes an unfunded mandate requires the parties to have all information regarding that law, including documents used in connection with preparation of the legislation. The fact that “rulings of the council ... shall not be subject to judicial review” further demonstrates the inapplicability of traditional civil litigation practices, including the doctrine of legislative immunity, to proceedings before the Council. N.J.S.A. 52:13H-18 (emphasis added).

Moreover, the Rules of Procedure for the Council specifically state that “[a] party may request discovery from another party on motion to the Council and for good cause shown” and “[t]he Council in its discretion may require any party to submit additional information.” Rule 12(b)-(c) (emphasis added).

COUNSEL WHEN IT MATTERS.SM

Mount Laurel, New Jersey | Hamilton, New Jersey | Atlantic City, New Jersey | Camden, New Jersey



You will recall that with the letter brief you submitted opposing Complainants' request for injunctive relief, you included the certification of Anthony Cimino, Executive Director of the New Jersey General Assembly Majority, who discussed the "experts, professionals, consultants, and actuaries that have been engaged to advise the Legislature." The certification of Kevin Drennan, Executive Director of the New Jersey General Senate Majority, also discussed those experts and included a letter from three consultants from Milliman, who conducted an analysis April of 2020, prior to the final language of Chapter 44 was agreed upon.

Accordingly, if Respondents continue to assert legislative immunity in an attempt to circumvent Complainants' valid discovery requests, Complainants will seek an Order from the Council requiring Respondents to submit substantive responses to same, pursuant to Rule 12. We plan to submit that request to Judge Sweeney on July 9, 2021. If you would like to meet and confer please do not hesitate to contact me.

Very truly yours,

WILLIAM C. MORLOK

EAS

cc: Jaclyn Frey, Deputy Attorney General (via email)

EXHIBIT H

Leon J. Sokol, Esq. (ID # 001081975)
CULLEN AND DYKMAN LLP
433 Hackensack Avenue
Hackensack, New Jersey 07601
(201) 488-1300
lsokol@cullenllp.com
Attorneys for Respondents
Senate President Stephen M. Sweeney
and Assembly Speaker Craig J. Coughlin

**In re Complaint Filed by the
Franklin Township Board of
Education Regarding P.L. 2020,
Chapter 44.**

**In re Complaint Filed by the
Gloucester City Board of
Education Regarding P.L. 2020,
Chapter 44.**

**In re Complaint Filed by the
Lower Township Elementary
Board of Education Regarding
P.L. 2020, Chapter 44.**

**STATE OF NEW JERSEY
COUNCIL ON LOCAL MANDATES
COLM-0001-21**

Consolidated Action

RESPONDENTS
SENATE PRESIDENT STEPHEN M. SWEENEY'S
AND ASSEMBLY SPEAKER CRAIG J. COUGHLIN'S
ANSWER TO THE COMPLAINTS

Respondents, Senate President Stephen M. Sweeney and Assembly Speaker Craig J. Coughlin (hereafter collectively “the Presiding Officers”), by way of Answer to the Complaints filed by Claimants Franklin Township Board of Education, Gloucester City Board of Education and Lower Township Elementary Board of Education (hereafter collectively “Claimants”)¹, say as follows:

¹ By Order dated April 5, 2021, the Council has consolidated the three Complaints. Because this matter has been consolidated and because the factual and legal assertions made in the three Complaints are virtually identical, the Presiding Officers, in their Answer, address the three Complaints together.

1. The Preamble of the Complaints is a legal assertion for which no answer is required.

2. Paragraph 1 of the Complaints is a legal assertion for which no answer is required.

3. With regard to the first sentence of Paragraph 2, the statement is a legal assertion for which no answer is required. With regard to the second sentence of Paragraph 2, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs.

4. Paragraph 3 of the Complaints is a legal assertion for which no answer is required.

5. Paragraph 4 of the Complaints is a legal assertion for which no answer is required.

6. Paragraph 5 of the Complaints is a legal assertion for which no answer is required.

7. Paragraph 6 of the Complaints is a legal assertion for which no answer is required.

8. Paragraph 7 of the Complaints is a legal assertion for which no answer is required.

9. With regard to the first and second sentences of Paragraph 8, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs. With regard to the third sentence of Paragraph 8, the statement is a legal assertion for which no answer is required.

10. With regard to the multiple paragraphs contained in the portion of the Complaints titled "Section 4," to the extent the sentences contained therein are factual assertions regarding Claimants' insurance expenses, the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs. To the to the extent the sentences contained therein are legal assertions, no answer is required.

11. With regard to the multiple paragraphs contained in the portion of the Complaints titled "Section 5," to the extent the sentences contained therein are factual assertions regarding Claimants' insurance expenses or (in the case of the Franklin Township Board of Education, the

status of certain litigation involving that Claimant), the Presiding Officers are without sufficient information to admit or deny the allegations contained therein and leave Claimants to their proofs. To the to the extent the sentences contained therein are legal assertions, no answer is required.

12. With regard to the portion of the Complaints titled “Section 6” referencing the resolution of the Claimant to file this action, the Presiding Officers are without sufficient information to admit or deny the authenticity and/or operative effect of the resolution.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Claimants have failed to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

L. 2020, c. 44 is not an impermissible unfunded mandate within the meaning of N.J. Const., Art. VIII, § 2, ¶ 5(b) and N.J.S.A. 52:13H-2.

THIRD AFFIRMATIVE DEFENSE

L. 2020, c. 44 is not an impermissible unfunded mandate because it “repeals, revises or eases an existing requirement or mandate” within the meaning of N.J. Const. Art. VIII, § 2, ¶ 5 (c)(3) and N.J.S.A. 52:13H-3(c).

FOURTH AFFIRMATIVE DEFENSE

L. 2020, c. 44 is not an impermissible unfunded mandate because the statute was enacted to help school districts in controlling spiraling health care costs through a careful re-design of public employee health insurance plans.

FIFTH AFFIRMATIVE DEFENSE

L. 2020, c. 44 is not an impermissible unfunded mandate because the Act is projected to provide total claim savings of \$865 million per year for all school districts.

SIXTH AFFIRMATIVE DEFENSE

L. 2020, c. 44 is not an impermissible unfunded mandate because health insurance costs inherently fluctuate based on a myriad of factors – many of which are outside the control of any governmental entity.

SEVENTH AFFIRMATIVE DEFENSE

L. 2020, c. 44 is not an impermissible unfunded mandate because to the extent that some school districts might encounter transitional costs – rather than transitional savings – the Act requires the school districts to enter into collective bargaining negotiations with their employee organization in order to address the transitional costs. The Claimants’ failure and refusal to comply with this required provision of the Act is sufficient to defeat their application for preliminary injunctive relief.

EIGHTH AFFIRMATIVE DEFENSE

All Claimants have failed to enter into collective bargaining negotiations with their employee organization as required by section 8 of L. 2020, c. 44. Having failed to comply with the requirements of the Act, all Claimants do not have a cognizable claim that L. 2020, c. 44 is an impermissible unfunded mandate.

NINTH AFFIRMATIVE DEFENSE

All Claimants have failed to enter into collective bargaining negotiations with their employee organization as required by section 8 of L. 2020, c. 44. Because all Claimants have failed to comply with the requirements of the Act, this tribunal is without jurisdiction to hear their alleged claims.

TENTH AFFIRMATIVE DEFENSE

All Claimants have failed to mitigate their damages.

ELEVENTH AFFIRMATIVE DEFENSE

All Claimants are barred from recovery by the doctrine of unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

Claimants' claims are barred by the doctrines of waiver, estoppel, and laches.

Cullen and Dykman LLP
Attorneys for Respondents Senate President
Stephen M. Sweeney and Assembly Speaker
Craig J. Coughlin

By: /s/ Leon J. Sokol
Leon J. Sokol

Dated: April 23, 2021

LEON J. SOKOL
PARTNER
lsokol@cullenllp.com

April 23, 2021

Via email and FedEx
jsweeneylaw@comcast.net

Hon. John A. Sweeney, A.J.S.C. (Ret.)
200 East 8th Street
Florence, NJ 08518

State of New Jersey
Council on Local Mandates
140 East Front Street, 8th Floor
Trenton, NJ 08625

**RE: In re Complaint Filed by the Franklin Township Board of Education
Regarding P.L. 2020, Chapter 44**

**In re Complaint Filed by the Gloucester City Board of Education
Regarding P.L. 2020, Chapter 44**

**In re Complaint Filed by the Lower Township Elementary Board of Education
Regarding P.L. 2020, Chapter 44**

COLM-0001-21 (Consolidated Action)

Dear Judge Sweeney:

This office represents Respondents Senate President Stephen M. Sweeney and Assembly Speaker Craig J. Coughlin (hereafter collectively “the Presiding Officers”) in the above-captioned consolidated action. Enclosed please find the following documents in Opposition to Claimants’ Application for Preliminary Injunctive Relief:

1. Letter Brief;
2. Certification of Anthony Cimino;
3. Certification of Kevin Drennan; and

4. Certification of Leon J. Sokol, Esq.

Also enclosed is Respondents Senate President Stephen M. Sweeney and Assembly Speaker Craig J. Coughlin's Answer to the Complaints.

We thank Your Honor for your attention to this matter.

Respectfully,

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Attorneys for Respondents Senate President
Stephen M. Sweeney and Assembly Speaker
Craig J. Coughlin

By: /s/ Leon J. Sokol
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April 23, 2021

Via email and FedEx
jsweeneylaw@comcast.netHon. John A. Sweeney, A.J.S.C. (Ret.)
200 East 8th Street
Florence, NJ 08518**RE: In re Complaint Filed by the Franklin Township Board of Education
Regarding P.L. 2020, Chapter 44****In re Complaint Filed by the Gloucester City Board of Education
Regarding P.L. 2020, Chapter 44****In re Complaint Filed by the Lower Township Elementary Board of Education
Regarding P.L. 2020, Chapter 44****COLM-0001-21 (Consolidated Action)**

Dear Judge Sweeney:

This office represents Respondents Senate President Stephen M. Sweeney and Assembly Speaker Craig J. Coughlin (hereafter collectively “the Presiding Officers”) in the above-captioned consolidated action. Please accept this informal letter-brief, in lieu of a more formal submission, in opposition to the Claimants’ application for preliminary injunctive relief.

The Presiding Officers rely principally on the brief of the Attorney General in opposition to the Claimants’ application for preliminary injunctive relief. The Attorney General’s comprehensive legal arguments are incorporated herein by reference. To those arguments the Presiding Officers add the following.

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A. Although Chapter 44 places a statutory cap on health-related expenses for NJEHP equivalent plans for new employees and for incumbent employees who elect to transfer to the NJEHP equivalent plans, Chapter 44 does not place any statutory limits on pre-existing private health insurance plans for which incumbent employees may elect to remain subject to after the effective date of the Act. The terms and conditions of the pre-existing health insurance plans are unquestionably within the scope of mandated collective bargaining under Section 8 of Chapter 4414

B. Even if a school district and an employee organization could not reach an agreement over changes in pre-existing health insurance plans in order to produce additional savings to the school districts that would offset transitional costs to NJEHP equivalent plans, the parties are also free to agree on offsets that would be derived from terms and conditions of employment other than health-care related financial issues14

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PRELIMINARY STATEMENT

This matter comes before the Council by way of Complaints filed by the Franklin Township Board of Education, the Lower Township Elementary Board of Education, and the Gloucester City Board of Education (hereafter collectively “the Claimants”). Claimants challenge L. 2020, c. 44 (hereafter “Chapter 44” or “the Act”). The purpose of Chapter 44 is to help school districts control their spiraling employee health care costs through a careful re-design of public employee health insurance plans. Notwithstanding this purpose, Claimants contend that Chapter 44 is an impermissible unfunded mandate within the meaning Article VIII, section 2, paragraph 5 of the New Jersey Constitution.

Chapter 44 is not an unfunded mandate. Quite the contrary. According to a leading actuary retained by the Legislature, Chapter 44 – based on the most recent data -- is projected to save school districts and their employees over \$800 million per year.

Chapter 44 is a complex piece of legislation that applies to 584 public school districts across the State. The Legislature anticipated that at least some of these hundreds of school districts might encounter short-term transitional costs, rather than transitional savings. In recognition of this potential circumstance, the Legislature directed school districts that might encounter short-term transitional costs to enter into collective bargaining negotiations with their employee organizations in order to address these costs. This is a requirement of the statute.

Remarkably, none of the three school districts that have brought this action has complied with the statutory mandate to initiate collective bargaining negotiations with their employee organizations. Instead, Claimants seek preliminary injunctive relief from this tribunal without so much as making an effort to engage in collective bargaining.

Claimants have failed to comply with the express terms of the statute. As such, they have no ground to seek relief before this tribunal.

Moreover, the public interest would be ill-served by the Claimants' application. More particularly, if the preliminary injunctive relief here sought were granted, the result would place a cloud of uncertainty and potential disruption for hundreds of school districts that are in the process of implementing health care benefit plans mandated by Chapter 44. Claimants' application should be denied for this reason alone.

For this and other reasons that are set forth herein (and that are set forth in the brief of the Attorney General), Claimants' application for preliminary injunctive relief should be denied.

STATEMENT OF FACTS

Under the Unfunded Mandated statute, a claimant may be entitled to preliminary injunctive relief if the Claimant can show, "to the satisfaction of the Council that (1) significant financial hardship to the claimant would result from compliance; and (2) there is a substantial likelihood that the statute or the rule or regulation is, in fact, an impermissible, unfunded State mandate." N.J.S.A. 52:13H-16; see also In re a Complaint filed by the Board of Education for the City of Clifton, Council on Local Mandates Decision (May 13, 1998). Here, the Claimants cannot establish *either* of these two conditions precedent to preliminary injunctive relief – let alone *both* of them.

We begin with a brief description of Chapter 44 and the legislative history underlying its enactment.¹ The Legislature's passage of Chapter 44 represented the culmination of years of planning and analysis by the key stakeholders and actuarial experts. As detailed in the accompanying

¹ For the convenience of the Council, a copy of Chapter 44 is annexed as Exhibit "A" to the accompanying Certification of Leon J. Sokol.

certifications of Kevin Drennan and Anthony Cimino, the goal of Chapter 44 – far from shifting additional costs to school districts – was to help school districts in controlling health care costs through a careful re-design of public employee health insurance plans. See Drennan Cert., ¶¶2-8; Cimino Cert., ¶¶3-5. According to a leading actuary retained by the Legislature, Chapter 44 – based on the most recent data -- is projected to provide total claim savings of \$865 million for a full year. See Drennan Cert., Exhibit “A” (Milliman Report, Appendix A-3, Column 6 and 8). In light of this substantial savings to school districts and employees, it is ironic – to say the least – that Chapter 44 is here alleged to be an impermissible unfunded mandate within the meaning of Article VIII, section 2, paragraph 5 of the New Jersey Constitution.

The annexed Milliman Report details the substantial cost savings produced by Chapter 44, In particular, Milliman identified the following sources of cost savings for the new health insurance plans authorized by the legislation as compared to the *status quo* health insurance plans:

The claim savings associated with a full adoption of each of these proposed plans is divided into three components... **The first savings component is a change in provider reimbursement levels resulting from a reduction in the amounts that out-of-network providers are paid...**

The second claim savings component, plan design changes, encompasses two parts: 1) changes in the paid-to-allowed ratio, and 2) changes in induced utilization when moving from a current plan to the proposed plan.

- Paid-to-allowed ratio refers to the proportion of allowed claims paid by the health plan, on average. The members pay the remaining portion as cost sharing (deductible, coinsurance, or copays). **Thus, for members who migrate to Plan A, B, B-1, C, or D, the employers are expected to realize savings by paying a lower portion of total claims since current plans have lower member cost sharing.**
- Induced utilization refers to the influence of cost sharing parameters (deductibles, copays, coinsurance, out-of-pocket maximum) on members’ utilization of services. All else being equal, the richer a plan is (higher paid-to-allowed ratio), the more services tend to be utilized. **Thus, a lower paid-**

to-allowed ratio is expected to “induce” lower utilization of services, resulting in lower claims being incurred, and further reducing the employer’s liability. These estimates assume that benefits are administered as designed, and that cost sharing is not reduced or waived by any providers.

The third claim savings component is related to prescription drug formulary charges for which Milliman did not develop an estimate...

[Drennan Cert., Exhibit “A” (Milliman Report, at 8-9) (emphasis added)]

As the legislative history establishes, the Legislature’s enactment of Chapter 44 encompassed careful evaluation of cost-savings measures and years of input from key stakeholders and actuarial experts. See Sokol Cert., Exhibit “B” (Assembly Appropriations Committee, Statement to S. 2273); Drennan Cert., ¶¶2-8; Cimino Cert., ¶¶3-5. As previously noted, the goal – far from shifting additional costs to school districts – was to help school districts in controlling health care costs through a careful re-design of public employee health insurance plans. See id., see also Drennan Cert., Exhibit “A” (Milliman Report, at 8-9 and Appendix A-1 through A-3).

Chapter 44 is a complex piece of legislation that applies to a broad range of school districts. The requirements of Chapter 44 apply to school districts that participate in the School Employees Health Benefits Program (SEHBP)² and to school districts that do not participate in the SEHBP. For both participating and non-participating school districts, Chapter 44 requires that the district adopt four statutorily mandated plan designs. These are, respectively, plans referred to as the New Jersey Educators Health Plan, the Garden State Health Plan, the NJ Direct 10, and the NJ Direct 15 plan. See L. 2020, c. 44, §§ 1, 5; Sokol Cert., Exhibit “B” (Assembly Appropriations Committee, Statement to S. 2273, at 1-3)

² The SEHBP is administered by the New Jersey Department of the Treasury, Division of Pensions and Benefits.

Under Chapter 44, all school district employees hired on or after July 1, 2020 are automatically enrolled in an NJEHP plan, unless they elect to waive coverage. See L. 2020, c. 44, §§ 2, 5. Furthermore, all school district employees hired prior to July 1, 2020, had the option to enroll in the new NJEHP plan unless they affirmatively elected to waive coverage, or affirmatively elected to remain enrolled in their prior coverage. See L. 2020, c. 44, §§ 2, 5. Again, these statutory requirements apply to both school districts that are members of SEHBP and to school districts that procure health insurance on the private market. See id.

Chapter 44's contemplates that – over time – an increasing number of school district employees will “migrate” from pre-existing plans to the new plans mandated by the Act. Notably, the Office of Legislative Services (OLS) -- in its Fiscal Impact Statement annexed to the Assembly Appropriations Committee Report accompanying the Act – stated that, in the aggregate, “[t]he greatest savings are predicated on 100 percent migration to the new plans and various plan design changes.” See Sokol Cert., Exhibit “B” (Assembly Appropriations Committee, Statement to S. 2273, at 7). In other words, the OLS Fiscal Impact Statement further confirms that Chapter 44 – far from imposing additional costs on school district taxpayers – will, in the aggregate, produce substantial savings to taxpayers (as well as to employees) through a reformation of the design of the health insurance plans. The OLS Statement also confirms that, in the aggregate, cost savings to school districts will increase over time as additional employees “migrate” to the new plans. See id.

There remains for discussion one additional and critical feature of Chapter 44. In enacting Chapter 44, the Legislature specifically recognized that some school districts might encounter added costs in the transition from pre-existing health insurance plans to NJEHP or NJEHP-equivalent

plans.³ As to this specific issue, Chapter 44 provides as follows:

8. With regard to employers that have collective negotiation agreements in effect on the effective date of this act, P.L.2020, c. 44, that include health care benefits coverage available to employees when the net cost to the employer is lower than the cost to the employer would be compared to the New Jersey Educators Health Plan, the employer and the majority representative shall engage in collective negotiations over the financial impact of the difference.

[L. 2020, c. 44, §8]

In enacting Section 8 of Chapter 44, the Legislature recognized that to the extent that some school districts might encounter transitional costs – rather than transitional savings – in adopting to Chapter 44’s new plan designs, those school districts were required to enter into collective bargaining negotiations with their employee organizations in order to address the transitional costs. See id. Hence, as further discussed below, Section 8 serves as a critical statutory mechanism that provides a remedy to school in the event that they encounter transitional costs – rather than transitional savings – in adopting to Chapter 44’s new plan designs.

Here, the Claimants assert that they have encountered transitional costs – rather than transitional savings – in adopting to Chapter 44’s new plan designs. *However, Claimants candidly admit that they have made no effort to enter into collective bargaining negotiations with their employee organizations in order to address these alleged transitional costs.* Claimants’ Complaints, ¶5. That admission by Claimants – among others – is fatal to their claim.

³ Given that there are over 500 school districts in the State, it is not surprising that at least some districts might encounter transitional costs – rather than transitional savings – in adopting to Chapter 44’s new plan designs

POINT I

CLAIMANTS CANNOT ESTABLISH PROBABLE SUCCESS ON THE MERITS (THAT CHAPTER 44 IS AN IMPERMISSABLE UNFUNDED MANDATE) BECAUSE TO THE EXTENT THAT A NON-SEHBP SCHOOL DISTRICT MIGHT INCUR CERTAIN ADDITIONAL COSTS IN THE TRANSITION PERIOD TO THE NEW COST-SAVING PLAN DESIGN, CHAPTER 44 REQUIRES THE SCHOOL DISTRICT TO ENTER INTO COLLECTIVE BARGAINING NEGOTIATIONS WITH ITS EMPLOYEE ORGANIZATIONS SO THAT THE SCHOOL DISTRICT WOULD AVOID SUCH COSTS. HERE, IT IS UNDISPUTED THAT CLAIMANTS *NEVER ENTERED INTO COLLECTIVE BARGAINING NEGOTIATIONS* – WHICH CONSTITUTES A VIOLATION OF CHAPTER 44. THAT STATUTORY VIOLATION – BY ITSELF – PRECLUDES CLAIMANTS’ UNDERLYING CLAIM AS WELL AS PRECLUDES CLAIMANTS’ APPLICATION FOR PRELIMINARY INJUNCTIVE RELIEF.

Chapter 44 is clear: “when the net cost to the employer is lower than the cost to the employer would be compared to the New Jersey Educators Health Plan, the employer and the majority representative **shall engage** in collective negotiations over the financial impact of the difference.” L. 2020, c. 44, §8 (emphasis added). By its terms, Chapter 44 requires the school district to enter into collective bargaining negotiations with its employee organizations so that the school district would avoid such costs. Notably, the statutory language, “shall engage,” is mandatory.

Notwithstanding the foregoing, it is undisputed that Claimants never bothered to enter into collective bargaining negotiations in order to address the allegedly excess costs associated with the transition to Chapter 44’s new plan designs. See Complaints, ¶5. That is a facial violation of Chapter 44. See L. 2020, c. 44, §8. Having failed to satisfy a statutory mandate to enter into collective bargaining, the resulting statutory violation – by itself – precludes Claimants’ underlying claim as well as precludes Claimants’ application for preliminary injunctive relief.

POINT II

IN THE ALTERNATIVE, CLAIMANTS CANNOT ESTABLISH THAT THEY WILL SUFFER “SIGNIFICANT FINANCIAL HARDSHIP RESULTING FROM COMPLIANCE” WITH CHAPTER 44 FOR A SIMPLE REASON: CLAIMANTS HAVE NOT COMPLIED WITH CHAPTER 44

As previously noted, a claimant may be entitled to preliminary injunctive relief if the Claimant can show, “to the satisfaction of the Council that (1) significant financial hardship to the claimant would result from compliance; and (2) there is a substantial likelihood that the statute or the rule or regulation is, in fact, an impermissible, unfunded State mandate.” N.J.S.A. 52:13H-16. In Point I, supra, we addressed and applied the second prong of the two-part test – and demonstrated that Claimants cannot, as a matter of law, satisfy the second prong

Here, we address and apply the first prong. The result is the same.

Claimants cannot establish that they will suffer “significant financial hardship *resulting from compliance*” with Chapter 44 for a simple reason. Claimants have not complied with Chapter 44.

As previously noted, it is undisputed that Claimants never bothered to enter into collective bargaining negotiations in order to address the allegedly excess costs associated with the transition to Chapter 44’s new plan designs. See Complaints, ¶5. That is a clear violation of Chapter 44. See L. 2020, c. 44, §8. Having failed to satisfy a statutory command to enter into collective bargaining, the resulting statutory violation – by itself – precludes Claimants’ underlying claim as well as precludes Claimants’ application for preliminary injunctive relief.

POINT III

IN THE ALTERNATIVE, CLAIMANTS’ FAILURE TO COMPLY WITH THE REQUIREMENTS OF CHAPTER 44 PRECLUDE THEM FROM SEEKING PRELIMINARY INJUNCTIVE RELIEF, BECAUSE EQUITABLE RELIEF CANNOT BE GRANTED TO A CLAIMANT WITH “UNCLEAN HANDS”

The doctrine of unclean hands provides that “a court should not grant relief to one who is a wrongdoer with respect to the subject matter in suit.” Faustin v. Lewis, 85 N.J. 507, 511 (1981). See also Chrisomalis v. Chrisomalis, 260 N.J. Super. 50, 54 (App. Div. 1992) (“Where the relief sought by the plaintiff is the result of his own wrongdoing, where the unclean hands of the plaintiff [have] infected the very subject matter in litigation, the plaintiff is barred from relief in a court of equity.”).

The Council frequently looks to case law in the Superior Court to guide its own determinations. Here, the doctrine of unclean hands properly informs a decision by this tribunal as to whether or not to grant preliminary injunctive relief.

As previously noted, it is undisputed that Claimants never bothered to enter into collective bargaining negotiations in order to address the allegedly excess costs associated with the transition to Chapter 44’s new plan designs. See Complaints, ¶5. That is a violation of Chapter 44. See L. 2020, c. 44, §8.

But that is not the only violation of Chapter 44 that is at issue here. Claimant Franklin Township Board of Education admits that it did not complete automatic enrollment of its new employees in the NJEHP equivalent plan as of July 1, 2020 – as required by Chapter 44. See Franklin Township Complaint, ¶6. Franklin Township further admits that it did not allow open enrollment of its existing employees in the NJEHP equivalent plan as of July 1, 2020 – also as required by Chapter 44. See Franklin Township Complaint, ¶7. Thus, Franklin Township is in brazen violation

of three separate and distinct provisions of Chapter 44.

If all of this were not enough, Franklin Township presently comes to the Council seeking preliminary injunctive relief because it has been sued by its employee organizations for noncompliance with Chapter 44 – and it seeks a stay of these pending lawsuits. See Franklin Township Complaint, §5. Thus, Franklin Township seeks relief from the Council *precisely because* of its own willful disregard of three distinct requirements of law. Not only is this “self-created hardship,” Franklin Township’s willful noncompliance with the multiple requirements of law is manifestly inequitable to its own employees and to the public at large. Claimants’ application for preliminary injunctive relief should be denied for this reason alone. See Chrisomalis v. Chrisomalis, supra, 260 N.J. Super. at 54. (“where the unclean hands of the plaintiff [have] infected the very subject matter in litigation, the plaintiff is barred from relief in a court of equity.”).

POINT IV

CLAIMANTS CONTEND THAT THEY ARE RELIEVED OF THEIR LEGAL OBLIGATION UNDER CHAPTER 44 TO ENGAGE IN COLLECTIVE BARGAINING NEGOTIATIONS BECAUSE “THERE ARE NO HEALTH CARE RELATED FINANCIAL ASPECTS REMAINING TO NEGOTIATE.” CLAIMANTS’ CONTENTION IS INCORRECT AS A MATTER OF LAW FOR TWO REASONS.

Finally, we address the sole legal rationale offered by Claimants for their admitted disregard of the collective bargaining requirement of Chapter 44. As previously noted, the statute is clear: “when the net cost to the employer is lower than the cost to the employer would be compared to the New Jersey Educators Health Plan, the employer and the majority representative **shall engage** in collective negotiations over the financial impact of the difference.” L. 2020, c. 44, §8 (emphasis added). By its terms, Chapter 44 requires the school district to enter into collective bargaining negotiations with its employee organizations so that the school district would avoid such costs.

Claimants admit that they ignored the mandate of section 8 of Chapter 44.

By this application for preliminary injunctive relief, Claimants assert that they are relieved of their legal obligation under Chapter 44 to engage in collective bargaining negotiations because “there are no health care related financial aspects remaining to negotiate.” See Complaints, ¶5. However, Claimants’ contention is incorrect as a matter of law for two reasons.

A. Although Chapter 44 places a statutory cap on health-related expenses for NJEHP equivalent plans for new employees and for incumbent employees who elect to transfer to the NJEHP equivalent plans, Chapter 44 does not place any statutory limits on pre-existing private health insurance plans for which incumbent employees may elect to remain subject to after the effective date of the Act. The terms and conditions of the pre-existing health insurance plans are unquestionably within the scope of mandated collective bargaining under Section 8 of Chapter 44

Claimant is correct that Chapter 44 places a statutory cap on employee contributions and other health care-related costs for NJEHP equivalent plans. See L. 2020, c. 44, §5a(1). However, Chapter 44 does not place any statutory limits on pre-existing private health insurance plans for which incumbent employees may elect to remain subject to after the effective date of the Act. See L. 2020, c. 44, §5a(1) (providing that “[n]othing in this section shall prohibit an employer from offering health care benefit plans that existed prior to the effective date of this act.”).

The terms and conditions of the pre-existing health insurance plans are unquestionably within the scope of mandated collective bargaining under Section 8 of Chapter 44. Therefore, contrary to Claimants’ contention, Chapter 44’s collective bargaining provision permits negotiations between school districts and employer organizations over the terms and conditions of the pre-existing health insurance plans.

That being so, Claimants’ proffered legal rationale for ignoring the mandatory collective bargaining provision of the Act does not withstand scrutiny.

B. Even if a school district and an employee organization could not reach an agreement over changes in pre-existing health insurance plans in order to produce additional savings to the school districts that would offset transitional costs to NJEHP equivalent plans, the parties are also free to agree on offsets that would be derived from terms and conditions of employment other than health-care related financial issues.

As previously noted, Claimants assert that they are relieved of their legal obligation under Chapter 44 to engage in collective bargaining negotiations because “there are no health care related financial aspects remaining to negotiate.” See Complaints, ¶15. That assertion is wrong for the reasons stated in Point IVA above. And the assertion is also wrong because it is based on the unstated assumption that Section 8 of Chapter 44 precludes a school district and employee organization from obtaining offsets that would be derived from terms and conditions of employment *other than health-care financial issues*. But that is not so. Nothing in Section 8 of Chapter 44 (or any other provision of Chapter 44) limits the scope of collective bargaining to health-care related issues only.

Thus, even if a school district and an employee organization could not reach an agreement over changes in pre-existing health insurance plans in order to produce additional savings to the school districts that would offset transitional costs to NJEHP equivalent plans, the parties are also free to agree on offsets that would be derived from terms and conditions of employment other than health-care financial issues.

In short, the Claimants’ only legal rationale for disregarding Chapter 44’s collective bargaining mandate is without foundation in fact or law. Preliminary injunctive relief should be denied for this reason alone.

CONCLUSION

For the reasons set forth above and for the other and further reasons set forth in the brief of the Attorney General, the Claimants' application for preliminary injunctive relief should be denied.

Respectfully,

Cullen and Dykman LLP
Attorneys for Respondents Senate President
Stephen M. Sweeney and Assembly Speaker
Craig J. Coughlin

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In re Complaint Filed by the Franklin Township Board of Education Regarding P.L. 2020, Chapter 44

COLM-0001-21 (Consolidated Action)

In re Complaint Filed by the Gloucester City Board of Education Regarding P.L. 2020, Chapter 44

CERTIFICATION OF ANTHONY CIMINO

In re Complaint Filed by the Lower Township Elementary Board of Education Regarding P.L. 2020, Chapter 44

ANTHONY CIMINO, of full age, certifies to the Council as follows:

1. I am the Executive Director of the New Jersey General Assembly Majority and offer this certification to provide the history and context under which Chapter 44 of the Laws of 2020 was enacted, and why Chapter 44 is not an unfunded mandate.
2. I join in the facts and positions as set forth in the Certification of my colleague, Kevin Drennan, and add the following.
3. Like Senate President Sweeney, Speaker Craig J. Coughlin has been committed to finding ways to reduce the costs of health insurance premiums for school districts and other public agencies.
4. With regard to the experts, professionals, consultants and actuaries that have been engaged to advise the Legislature, I was designated by Speaker Coughlin to manage and coordinate their efforts and those of staff and legislators for the General Assembly.
5. As Chapter 44 does not require school districts to expend additional funds for its implementation, but instead is intended to and does provide the mechanism to reduce the costs of health insurance, it is not subject to the unfunded mandate provisions of Article VIII, Section II,

Paragraph 5 of the New Jersey Constitution or N.J.S.A. 52:13H-2.

6. Furthermore, I join in Kevin Drennan's position that as the complainants in this matter have not followed the mandatory collective bargaining procedures set forth in Section 8 of Chapter 44, their complaints should be dismissed.

I certify that the foregoing is true and correct.

Anthony Cimino

Dated: April __, 2021

Paragraph 5 of the New Jersey Commission on N.J.S.A. 52:13H-2

6. Furthermore, I join in Kevin Drennon's position that as the complainants in this matter have not followed the mandatory collective bargaining procedures set forth in Section K of Chapter 44, their complaints should be dismissed.

I certify that the foregoing is true and correct.


Anthony Cimino

Dated: April __, 2011

In re Complaint Filed by the Franklin Township Board of Education Regarding P.L. 2020, Chapter 44

In re Complaint Filed by the Gloucester City Board of Education Regarding P.L. 2020, Chapter 44

In re Complaint Filed by the Lower Township Elementary Board of Education Regarding P.L. 2020, Chapter 44

COLM-0001-21 (Consolidated Action)

CERTIFICATION OF KEVIN DRENNAN

KEVIN DRENNAN, of full age, certifies to the Council as follows:

1. I am the Executive Director of the New Jersey Senate Majority and offer this certification to provide the history and context under which Chapter 44 of the Laws of 2020 was enacted, and why it is not an unfunded mandate as defined in Article VIII, Section II, Paragraph 5 of the New Jersey Constitution and N.J.S.A. 52:13H-2.
2. For many years, the escalating costs of health insurance have posed a serious fiscal problem for New Jersey government agencies, and Senate President Stephen M. Sweeney has made addressing the problem of escalating health insurance costs a priority.
3. Enactment of Chapter 78, L.2011 was one attempt which primarily addressed the revenue side by increasing the contribution by public employees to health insurance premiums.
4. Another attempt to reduce health care costs was the enactment of Chapter 67 in 2016 which reduced prescription costs by approximately \$600,000,000.00.
5. In 2018, Senator Sweeney convened a group of experts and legislators to investigate the problems of both escalating health insurance costs and the underfunding of public employee pensions. The result was the publication of a report in August, 2018 entitled "Path to Progress"

which included recommendations to reduce the cost of health insurance premiums, several of which were incorporated into Chapter 44.

6. For the next two years, members of the Legislature and staff met with actuaries, experts on health insurance plan design, and other economic experts to investigate potential solutions to the continuing problem of the escalating cost of health insurance. From these discussions and meetings, several ideas were put forth involving revisions to existing laws that would result in reducing health care costs and corresponding reductions in health insurance premiums as well as inequities that were created by Chapter 78 with regard to employee contributions. I was assigned to manage and coordinate the efforts of outside experts, consultants, legislative staff and legislators and as such, I have an intimate knowledge as to the intent and legislative history of Chapter 44.

7. Under the leadership of Senator Sweeney and General Assembly Speaker Coughlin, draft legislation was produced that addressed both the Chapter 78 inequities and reducing the cost of health insurance premiums. The drafts were then circulated among experts for comment.

8. One of the experts engaged by the Legislature was the Milliman actuarial firm which assessed the savings for the local school districts enrolled in the State Health Benefits Program (“SHBP”) and the School Employee Health Benefit Program (“SEHBP”), as well as those school districts that obtained health insurance coverage from outside sources. Milliman estimated that the total claim savings would be \$865,000,000.00 for a full year for all school districts. A copy of the Milliman Report is attached hereto as Exhibit “A”. The data and conclusions in the Milliman Report are as of April, 2020. Although some amendments were made to the draft legislation between April, 2020 and July 1, 2020 when Chapter 44 was enacted, the analysis of cost savings remained the same for consideration by the Legislature when it voted to enact Chapter 44.

9. I understand that the Franklin Township, Gloucester City, and Lower Township Boards of Education have applied to the Council on Local Mandates for an injunction to prevent the implementation of Chapter 44. If the injunction is granted, it will create chaos and disruption for most of the 584 operating school districts that are in the process of implementing the plans and related cost savings provided by Chapter 44. Additionally, an injunction would frustrate and substantially undermine the important efforts of the Legislature and Executive Branch to address the escalating costs of health insurance.

10. Furthermore, Chapter 44 is **not an unfunded mandate**. It creates a new health insurance plan design which will result in significant cost savings and corresponding reductions in health insurance premiums, with the savings being shared by school districts and employees whose contributions under Chapter 78 are revised to be based upon a percentage of salary instead of a percentage of premium.

11. I note that each of the three complainants in this matter have ignored the mandatory requirements of Section 8 of Chapter 44 which requires resumption of collective bargaining negotiations to address any increase in costs resulting from the revised employee contributions and prescribed benefit plan compared to the previous coverage plans. For this reason alone as well as the fact that Chapter 44 is not an unfunded mandate, I believe the Council should dismiss all three complaints.

I certify that the foregoing is true and correct.



Kevin Drennan

Dated: April 26, 2021

EXHIBIT A



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April 21, 2021

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State House – South Addition
125 West State Street, LA-33
Trenton, NJ 08608

Re: Savings Analysis of New Jersey Educators Health Plan Established by P.L. 2020, Chapter 44

Dear Kevin:

As requested, we have estimated the potential claims cost savings and member premium contribution reductions to the government health benefit plans offered by the State of New Jersey in the School Employees' Health Benefits Program ("SEHBP"). The attached estimates are associated with the adoption of the "New Jersey Educators Health Plan" ("Educators Plan") as described in P.L. 2020, Chapter 44. This document is referred to as "Ch. 44" within this document. This analysis does not address the "Garden State Health Plan," also referenced in Ch. 44.

The purpose of this letter is to document Milliman's prior analysis regarding the proposed Educators Plan prior to adoption of Ch. 44 versus the provisions of Ch. 44. The prior analysis was conducted in April 2020 prior to adoption of Ch. 44 and was based on the most up to date information regarding claims, premiums, membership data, etc. at the time. The actual provisions of Ch. 44 are very similar to Milliman's prior analysis except that the actual effective date was delayed six months from July 1, 2020 to January 1, 2021. We did not make any adjustments to our analysis to reflect this difference as the results are based on savings for a full 12 months. Furthermore, the majority of our analysis was conducted prior to the Covid-19 pandemic based on projected claims in a pre-pandemic environment. Updating results for subsequent claims information, premium information, participant data or impact of the pandemic, etc. was outside the scope of this analysis. The scope of our analysis is limited to the results presented in this letter, based on the assumptions specified in this analysis, and the attachments.

The purpose of this letter is to present estimated net cost savings to the employers funding the SEHBP plans from adopting the Educators Plan for active employees and early retirees, assuming that all eligible members elect the Educators Plan upon adoption. Separately, we have estimated approximate reductions to current 2020 premium rates resulting from the adoption of this plan, had it been fully in place in 2020 with all other pricing assumptions unchanged. Our analysis and results may not be appropriate for any other use.

We, Chris Ruff, Jack Burke, and Scott Porter, are members of the American Academy of Actuaries and meet its qualification standards for actuaries issuing statements of actuarial opinion in the United States. We are consulting actuaries with Milliman, an independent actuarial consulting firm that is not affiliated with, nor a subsidiary, nor in any way owned or controlled by the State of New Jersey.

Milliman's work product was prepared solely for the New Jersey Senate Majority Office for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work.

The attached estimates have been prepared for the use of the New Jersey Senate Majority Office. This document may not be distributed to any other party without Milliman's prior written consent. If Milliman consents to any such distribution, the report must be distributed in full. Milliman does not intend to benefit or create a legal duty to any third party recipient of its work.

Executive Summary

The New Jersey Senate Majority Office requested that Milliman evaluate cost savings associated with health insurance benefit plan changes for active school employees and early retirees. These two groups of employees had similar, but not identical, sets of plans available to them leading up to the adoption of Ch. 44. The purpose of this analysis is to consider potential sources of savings associated with all current active employees and early retirees migrating to the Educators Plan. Please note that throughout this report, "savings," or "savings to the State" represent total cost savings to sponsors of these health plans, whether the underlying funding source is the State of New Jersey itself or schools participating in these plans. No assumption is made regarding how many employees would elect the Educators Plan, but rather the savings are developed as if the Educators Plan is chosen by all currently enrolled employees (in 2020).

Ch. 44 specifies the benefit design and provider reimbursement for the Educators Plan as summarized below. In addition, Milliman was provided with benefit design, provider reimbursement, and other plan information for the current plans as well as savings for changes to certain plan design elements. Much of this additional information is based on reports produced by Aon, the actuary for the SEHBP. These reports include:

- Plan Year 2020 Rate Renewal Recommendation Report dated August 23, 2019¹ (referred to hereafter as "Aon 2020 Rate Renewal Report")
- SEHBP NJEA Plan Design & Employee Contribution Request memo dated January 21, 2020 (which estimated savings for a change to a plan design similar to the Educators Plan, and is referred to hereafter as "Aon's January 21, 2020 memo")
- Responses to Questions from February 13, 2020 Discussion memo dated February 17, 2020 (referred to hereafter as "Aon Q&A memo")

We estimated total claims savings from the adoption of the Educators Plan, composed of changes in induced utilization, the plan paid-to-allowed ratio (both described below), and savings from changes in the level of provider reimbursement, assuming that all eligible members elect the Educators Plan upon adoption. Savings due to the change in provider reimbursement for out-of-network claims is based on information noted in the Aon Q&A memo, which we believe reflects the SEHBP distribution of claims related to physical therapy, acupuncture, and chiropractic services. Additionally, savings due to formulary changes were quantified by Optum as noted in the Aon Q&A memo and not estimated by Milliman. Milliman does not have sufficient data to independently review the provider reimbursement impact specific to each out-of-network service and pharmacy benefit savings assumptions.

The following summarizes the key features of Ch. 44, which became effective January 1, 2021:

- All employees of New Jersey school districts, public charter schools, Renaissance schools, and county colleges hired on or after January 1, 2021 will be automatically enrolled in the Educators Plan. The plan design is described in Appendix E.
- The Educators Plan will be available to all SEHBP participants, and will become the default plan if an employee does not actively select another plan, but will not be required.

¹ The report for school employee plans can be found at the following link:

<https://www.state.nj.us/treasury/pensions/documents/hb/rate-renewal/rate-renewal-school-employees-2020.pdf>

- The Educators plan will be tied to a new contribution schedule (see Appendix F), based on a percentage of salary, replacing Chapter 78 contributions. There are no changes to Chapter 78 contributions, or levels negotiated in collective bargaining agreements, if participants remain in the other plans.
- All employers of public educators not in the SEHBP must offer a plan that duplicates the benefit levels of the Educators Plan.
- In-network provider fee schedules shall remain at 125% - 175% of the Medicare Fee Schedule.
- Out-of-network fee schedules for all medical services except for physical therapy, acupuncture, and chiropractic care shall be reduced to 200% of the Medicare Fee Schedule.
- Out-of-network fee schedules for physical therapy, acupuncture, and chiropractic care shall be consistent with the reimbursement limits of the State Health Benefits Plan ("SHBP") plan².

The results of this cost savings analysis are calculated by source of savings (benefit changes, provider reimbursement change, other plan feature changes) as shown in Appendix B, and summarized in Appendix A-1. Each section of Appendix B presents the results for replacement of current benefits with the Educators Plan. Appendix A-1 summarizes the claims savings by four primary sources (reimbursement change, change in induced utilization, paid to allowed impact, and adoption of mandatory generic dispensing). The projected savings assume that the benefits are administered as designed; that is, cost-sharing attributable to a member, per the plan design, is charged to that member and not waived or reduced. Under these assumptions, we estimate claims savings of approximately \$223 million, or 14% of projected 2020 claims for active employees and early retirees, by moving to the Educators Plan. These savings amounts are stated in 2020 dollars as if the Educators Plan would be in effect for all members in 2020. These claims savings are offset by a reduction in estimated employee contributions of \$94 million, resulting in net savings of \$129 million. Any contribution change associated with retirees was assumed to be immaterial for 2020 since very few current retirees are subject to the Chapter 78 contribution requirements.

No changes in retention costs (administrative expenses, CMS funding, other non-benefit expenses, and profit) or education surcharge were assumed to occur as a result of a change in benefit plan. Therefore, total premium savings dollars are assumed to equal total claims savings dollars. Because these other elements of premium remain unchanged, the percentage change in the premiums would differ from the percentage change in the claims costs.

Impact on Employee Contributions: All active participants in SEHBP are assumed to follow the Chapter 78 contribution schedule. The Chapter 78 contribution schedule defines a member's contribution based on salary bands as well as the premium of the employee's plan. Chapter 78 contribution percentages are estimated based on the distribution of members by contract tier and salary as included in Appendix B of Aon's January 21, 2020 memo, which is based on the census data used in the Fiscal Year Ending June 30, 2019 GASB 75 valuation. The percentage is applied to the applicable plan's premium assuming that all members are in the medical plan with MMRx option.

Ch. 44 modifies the contributions for employees who elect the Educators Plan to be based on salary varying by contract tier regardless of the premium of the plan. This change is anticipated to reduce 2020 contributions made by employees in the SEHBP by approximately \$94 million or 41%. The Ch. 44 contribution schedule is tied to salary, whereas the current contribution schedule determines employee contributions based on both salary and the premium. Therefore, to the extent that claims costs increase over time at a rate that exceeds that of salary increases, the reduction in employee contributions relative to current employee contributions under Chapter 78 would increase in future years. We have not estimated the potential impact on future years.

² 2020 SHBP plans can be found at: <https://www.state.nj.us/treasury/pensions/documents/hb/oe2020/sbcs/sbc049.pdf>

Ch 44 also indicates that early retirees who elect the Educators Plan will contribute a percentage of the retirement allowance. Ch. 44 does not alter contributions for Medicare eligible retirees such that amounts determined per Chapter 78 would remain in effect. Since the member's retirement allowance is not expected to increase in the future, the contribution toward retiree healthcare would remain constant until the member becomes eligible for Medicare. This will result in a decreasing percentage of the healthcare premium covered by retiree contributions as healthcare premiums are expected to increase with health cost trend in future years. Once a member becomes eligible for Medicare, the dollar amount of a retiree's contribution would increase in accordance with Chapter 78 resulting in a constant percentage of the healthcare premium covered by the retiree through time.

Since nearly all current retirees do not contribute, any change in contributions for current retirees in 2020 is assumed to be de minimis. As current active members retire, this additional reduction in early retiree contributions will have a greater impact over time, offsetting claims savings in future years. This would also have a further impact on the net retiree medical liability accounted for on the State's and school districts' financial statements under GASB 75. Please refer to the Estimated Present Value section below.

Extrapolation to non-SEHBP Employers: Estimated SEHBP savings is based on an employee count of 47,227 as indicated in Aon's January 21, 2020 memo. The total SEHBP and non-SEHBP employee headcount is 217,131 as noted in the June 30, 2019 GASB 75 report. Aon's January 21, 2020 memo assumes that, on a percentage basis, the savings per non-SEHBP active education employee would equal the savings per SEHBP participant such that the extrapolated total SEHBP and non-SEHBP savings would equal approximately 4.6 times the savings for SEHBP participants alone. If this ratio is applied to the active portion of the savings, total claims savings of the Educators Plan would equal \$860 million offset by a reduction in employee contributions of \$431 million for net savings of \$429 million. Summaries of the savings extrapolated to non-SEHBP employers and the total estimated and extrapolated savings on SEHBP and non-SEHBP employers are included in Appendices A-2 and A-3, respectively.

The following are potential reasons that the percentage savings for non-SEHBP employees may be different:

- The majority of claims savings is due to changes in provider reimbursement levels for out-of-network claims. Based on anecdotal information provided by the Senate Majority Office and the NJEA, the underlying populations and provider reimbursement levels for non-SEHBP employers are assumed to be similar to current SEHBP levels, such that percentage savings on these services for non-SEHBP employers is expected to be similar to that determined for the Educators Plan in SEHBP. To the extent that current reimbursement levels of plans for non-SEHBP employers are lower than the SEHBP levels, the savings would be less.
- The mandatory generic prescribing change is specific to the prescription drug plans (and the accompanying drug formularies) offered to SEHBP participants. Based on anecdotal information provided by the Senate Majority Office and the NJEA, non-SEHBP employers have similar underlying populations and prescription drug benefits and currently do not employ formularies or mandatory generic prescribing, such that percentage savings on these services are expected to be similar to that determined for the Educators Plan in SEHBP. To the extent that mandatory generic prescribing or different formularies exist among non-SEHBP employers, the savings from this feature would be less.
- Per the Aon Q&A memo, 37% of SEHBP participants are not receiving prescription drug benefits through SEHBP. Therefore, savings associated with prescription drug benefits to these participants are not reflected in the analysis. Extrapolating the savings from a closed formulary and mandatory generic prescribing to this group may produce an additional \$5 million in savings assuming consistent populations and benefit levels.
- In an analysis of non-SEHBP collective bargaining agreements provided by NJEA, about 4% of total education employees are part of collective bargaining agreements that reduced employee

contribution levels to a percent of pay schedule similar to the one Ch. 44 contribution schedule such that these employees may not be incentivized to elect the Educators Plan.

- The New Jersey School Boards Association summarized changes to Chapter 78 health insurance contributions obtained in teacher contract negotiations in a document dated October 30, 2019 provided by the Senate Majority Office. In reviewing this document, many districts have negotiated lower employee contributions than Chapter 78, such as caps, percentage reductions, and stipends. All else equal, since contributions for these employees are currently lower than full Chapter 78 contributions, the offsetting costs (i.e., contribution reductions) may be lower, resulting in higher net savings.

Estimated Premium Rates for Select Plans: Appendix C contains estimated 2020 premium rates of the Educators Plan, assuming that the savings as a percentage of projected 2020 premiums were applied to certain current 2020, medical with drug coverage, premium rates for active employees. Note that because the estimates of the Educators Plan's premiums are based on change factors applied to current (2020) premiums for each plan, the resulting estimated premium for each plan depends on the starting current premiums. This will result in different premiums for the Educators Plan based on the differences in the current plan premiums. However, we expect the final premiums established for the Educators Plan would reflect an average of these calculated premiums that would result in a similar estimate for the change in employee contributions. For purposes of this analysis, premiums for school employees in the Horizon or Aetna "10" plans were assumed to be the Direct 10 premiums; all other employees were assigned the Direct 15 premiums.

These are not future rates, which would include medical and drug claims trend and other changes. These revised rates assume that all other premium development factors are unchanged, such as assumed claims trend to 2020, morbidity underlying the rate development for each population, medical management assumptions, etc.

Note that differences between our projections and actual amounts depend on the extent to which future experience conforms to the assumptions made for this analysis. It is certain that actual experience will not conform exactly to the assumptions used in this analysis. Actual amounts will differ from projected amounts to the extent that actual experience deviates from expected experience.

Estimated Impact on Present Value of Retiree Costs: Since the Educators Plan impacts healthcare claims costs and contributions associated with current and future retirees, it will have an impact on the State's and local employers' OPEB liability in accordance with Government Accounting Standards Board (GASB) Statement No. 75. This standard requires employers to expense the cost of retiree healthcare benefits and incorporate that liability on their balance sheets. Although we do not have the individual participant data or the full set of actuarial assumptions programmed to determine the impact on the GASB 75 liability, we are able to determine an estimated present value of premiums and contributions to future retirees to provide a broad based impact that the changes the Educators Plan may have on the GASB 75 liability. Since there is no change in claims or contributions for Medicare-eligible retirees, the present values only reflect early retiree costs prior to reaching Medicare age. Since the present values do not represent the GASB 75 liability, we believe the percentages presented, either the contribution as a percent of the premium or the percentage differences, are more illustrative of the impact of the Ch. 44 changes than the calculated dollar amounts.

Appendix G provides details of the estimated difference in the present value of pre-65 premiums and associated contributions to future retirees of SEHBP associated with the adoption of the Educators Plan. The results are shown separately for members subject to, and not subject to, the Chapter 78 contribution

schedule. SEHBP and non-SEHBP employees with at least 20 years of service as of June 28, 2011 do not contribute towards retiree health coverage and are not subject to the Chapter 78 contribution schedule.

For employees not subject to the Chapter 78 contribution schedule, the Educators Plan is projected to reduce the present value of pre-65 premiums by 13.4%. Since there are no contributions, the difference in the net present value is also projected to be a reduction of 13.4%.

For employees subject to the Chapter 78 contribution schedule, the Educators Plan is projected to reduce the present value of pre-65 premiums by 13.4% and the present value of associated retiree contributions by 84.1%, resulting in an *increase* in the net present value by 5.8%. This means that on a present value basis, the decreases in contributions made by future retirees are greater than the decreases in future claims costs, based on the simplified assumptions used in this analysis.

Please note that for employees subject to the Chapter 78 contribution schedule, the present value of retiree contributions is projected to be reduced from approximately 21.4% of the present value of the premiums under Chapter 78 to 3.9% under the Educators Plan.

Actuarial Assumptions

The present value is not intended to be an OPEB liability in accordance to GASB 75, but is rather an illustrative present value to compare the premiums and Ch. 44 contribution schedules attributable to future education retirees. The simplifying assumptions used in the analysis are:

- Associated retiree premiums are shown on Appendix C
- The contribution schedule shown in Appendix F, except the member's retirement allowance from TPAF or PERS, would be used instead of the member's salary.
- 5.0% annual medical cost trend
- 3.5% discount rate
- 100% of active employees elect coverage
- Employees elect either Direct 10 or Direct 15 coverage at retirement based on current active election (except under current plan, employees not subject to Ch. 78 schedule are assumed to elect Direct 10)
- 75% of male and 55% of female employees are assumed to elect to cover a dependent spouse at retirement (no additional dependents are assumed)
- Demographic assumptions are from either the 2018 TPAF Experience Study produced by Cheiron January 2020 or the 2019 PERS Experience Study produced by Cheiron February 2020.

Participant Data

For purposes of determining the present value, future retirees are based on contributory active member data used in the July 1, 2017 actuarial valuation of the Teachers' Pension and Annuity Fund and age/service extrapolated July 1, 2017 PERS Local data. PERS Local data was extrapolated from individual TPAF data adjusted for age/service/gender/compensation schedules included in the July 1, 2017 actuarial valuations. This total data set was further adjusted to reflect the total number of SEHBP and non-SEHBP employees, all anticipated to be covered by the SEHBP as a retiree. TPAF data was multiplied by 102.6% to account

for TPAF and ABP participants whereas PERS Local data was multiplied by 49.2% to account for other participants in SEHBP as noted in June 30, 2017 GASB 75 Aon report.

No estimate is included for current retirees as that member data is not available.

In addition, no adjustment was made to project the data forward from July 1, 2017. A projection would result in a higher number of current employees subject to the Chapter 78 contribution schedule.

Background

The State of New Jersey offers administrative-services-only (ASO) health benefit plans, administered by Horizon BCBS of NJ and Aetna, to active school employees and early retirees. School employees are covered under the School Employee Health Benefit Plan (SEHBP).

School employees are currently offered a set of plans ranging in plan type (PPO, HMO, high deductible) and richness (ratio of claims paid by the plan to total allowed claims (i.e., paid-to-allow ratio)). Ch. 44, evaluated in this analysis, describes a new Educators Plan that would be offered to all school active employees and early retirees beginning January 1, 2021. The Educators Plan would be the only option available to newly-hired SEHBP members on or after January 1, 2021 and all non-Medicare-eligible “early retirees” attaining such status on or after January 1, 2021, and would be made available as the default plan option for all current active employees and early retirees after that date. The Garden State Plan would become available on July 1, 2021, and is outside of the scope of this analysis.

This analysis assumes that all current active employees and early retirees migrate to the Educators Plan. Medicare-eligible retirees are assumed not to be impacted by this agreement. Further, any changes in government expenditures related to the migration of employees currently covered by private plans into the government plans is outside of the scope of this analysis.

The contributions paid by school employees electing the Educators Plan would differ from the current active school Chapter 78, P.L. 2011 contribution schedule. This analysis provides an estimate of the impact that a change in contribution schedule would have on employers’ collective portion of the premiums. Any contribution change associated with existing retirees was assumed to be immaterial as of July 1, 2020, but we anticipate this difference to grow over time. Estimating the difference in future years is outside the scope of this assignment.

Methodology and Assumptions

The goal of this analysis was to project savings associated with a full conversion to the Educators Plan arising from associated changes in provider reimbursement levels, changes in cost-sharing (benefit reductions), and other changes in plan features related to the prescription drug coverage (which were not estimated by Milliman). These savings are offset partially by reductions in employee contributions, which are also estimated herein.

The current 2020 plan designs for school employees are publicly available from the NJ Department of Pensions and Benefits³. We were asked to estimate the savings associated with the Educators Plan as defined in Ch. 44. We were also provided with current high-level provider reimbursement levels, expressed as a percentage of Medicare allowed. We were directed to assume that current reimbursement for in-network providers is set at 125% - 175% of Medicare allowed, and that out-of-network provider

³ Benefit designs for active school employees and early retirees can be found at the following two locations, respectively:
<https://www.state.nj.us/treasury/pensions/documents/hb/oe2020/hb-sbc-ed-20.shtml>
<https://www.state.nj.us/treasury/pensions/documents/hb/oe2020/hb-sbc-ed-retired-20.shtml>

reimbursement is approximately 350% of Medicare allowed. The current and reimbursement levels and those introduced by under Ch. 44 are shown in Appendix D.

Milliman was provided with additional clarification regarding the provider reimbursement levels. Specifically, Aon's January 21, 2020 memo indicated that current out-of-network reimbursement is "90% of Fair Health;" it is our understanding that 350% of Medicare allowed is an approximation of billed charges capped at the 90th percentile of the Fair Health database in aggregate. Furthermore, Aon's Q&A memo noted the percent of claims savings that the change in reimbursement level may have on physical therapy, chiropractic and acupuncture services separate from other services.

When applied to the projected 2020 claims from the Aon 2020 Rate Renewal Report, the savings percentages noted in the Aon Q&A memo imply claims savings of approximately \$190 million, or about 45.7% of starting medical claims, due to the out-of-network reimbursement reductions. The actual savings will be based on actual experience of the members; the utilization of in-network providers; the distribution of services, especially on out-of-network claims; and balance billing by out-of-network providers. Given that Milliman does not have access to the actual claims experience, we have not estimated the potential difference in reimbursement levels by service category. Therefore, we have relied on the claims savings implied by Aon associated with these reductions in out-of-network provider reimbursement levels. We believe that Aon's estimate is within a reasonable range of possible claims savings given the anecdotal evidence provided by the Senate Majority Office on the percentage of claims associated with physical therapy, chiropractic and acupuncture services.

Milliman was provided Aon's 2020 Rate Renewal Report, with projected 2020 claims prior to any plan migration occurring in 2020 or beyond, projected 2020 premium dollars, and projected 2020 enrollment levels. We were also provided with an estimated distribution of prescription drug claims between those members with the "MMRx" benefit (63%) and those with the drug card benefit (37%) in the Aon Q&A memo; we have assumed that this distribution applies uniformly across all plan designs. Our analysis assumes consistent covered populations; that is, the morbidity and demographic characteristics of the plan-level populations underlying the projected 2020 values are the basis for the projected cost savings and approximate rate reductions estimated in this analysis.

The Aon Q&A memo indicated that 30% of SEHBP active medical PPO claims paid by Horizon BCBS were for out-of-network services during the period of March 2018 to April 2019. The analysis contained herein assumes an analogous distribution of utilization in- and out-of-network consistent with approximately 30% of starting paid medical claims. We made no further adjustment for the potential that members may utilize a higher percentage of in-network physicians and hospitals under the Educators Plan.

The benefit design of the Educators Plan is described in Appendix E. Note that the actuarial values may differ over time, e.g., a plan with an actuarial value of 80% in 2020 may have a higher actuarial value in 2025 if underlying copays, deductibles, out-of-pocket maximums, etc. are not increased with medical cost trend.

The claims savings associated with a full adoption of the Educators Plan is divided into three components, as shown in Appendix B. The first savings component is a change in provider reimbursement levels resulting from a reduction in the amounts that out-of-network providers are paid. Assumed changes in the extent to which out-of-network providers balance bill (i.e. charge the member the difference between billed charges and the amount paid by the third party administrator) were outside of the scope of this analysis. The potential impact of this on induced utilization is discussed further below.

The second claims savings component, cost-sharing changes, encompasses two parts: 1) changes in the paid-to-allowed ratio, and 2) changes in induced utilization when moving from a current plan to the Educators Plan.

- ***Paid-to-allowed ratio*** refers to the proportion of allowed claims paid by the health plan, on average. The members pay the remaining portion as cost-sharing (deductible, coinsurance, or copays). Thus, for members who migrate to the Educators Plan, the employers are expected to realize savings by paying a lower portion of total claims since current plans have lower member cost-sharing.
- ***Induced utilization*** refers to the influence of cost-sharing parameters (deductibles, copays, coinsurance, out-of-pocket maximum) on members' utilization of services. All else being equal, the richer a plan is (higher paid-to-allowed ratio), the more services tend to be utilized. Thus, a lower paid-to-allowed ratio is expected to "induce" lower utilization of services, resulting in lower claims being incurred, and further reducing the employer's liability. These estimates assume that benefits are administered as designed, and that cost-sharing is not reduced or waived by any providers.

To elaborate on this last point, if physicians, hospitals, or pharmacies do not collect the amount that is due from members, then the assumed reduction in utilization of services (or drugs) by the member may not be realized. We were given anecdotal accounts of out-of-network providers waiving the cost-sharing, or charging in-network levels of cost-sharing instead of out-of-network levels in the current plans. We do not predict whether, or to what extent, this practice would continue. The estimated induced utilization implicitly assumes that members will pay the cost-sharing as defined by each plan. If all member cost-sharing were waived by out-of-network providers, then the assumed savings from induced utilization savings would be expected to be reduced. However, if balance billing is currently being waived, but will not be waived under the Educators Plan due to the reduced provider reimbursement levels, estimated savings from induced utilization may increase.

The third claims savings component is related to prescription drug formulary changes for which Milliman did not develop an estimate. Further information on the specific drug formularies and actual utilization of services and drugs would be needed to estimate the impact of these features. Optum's estimated impact of the implementation of these features disclosed below, were provided in the Aon Q&A memo. Milliman reviewed these estimates at a high level, and have shown the savings resulting from these items as a separate category. These features are:

- A "mandatory generic" requirement, whereby a member pays the difference in allowed cost between the prescribed brand drug and the available generic equivalent.
- A closed formulary, with generally more restrictions.

The data and information that we received was not sufficient to calculate the impact of this third savings component. As provided to us in the Aon Q&A memo, Optum projected that Active and Early Retiree prescription drug claims, net of rebates, would decrease by 8.8% due to the mandatory generic requirement and adoption of Optum's closed formulary combined.

Claims savings were offset by reductions in assumed employee contributions to determine the net savings to employers of the Educators Plan. In addition to the employee contribution assumptions described above, active school employee contributions were estimated using a distribution of enrollment by salary and coverage tier based on the Fiscal Year Ending June 30, 2019 GASB 75 valuation census data.

Data Reliance

In preparing our estimates, we relied on actual and projected claims, enrollment, and premium data, and other information provided to us by the Senate Majority Office, the Office of Legislative Services, and Aon via the Aon memo entitled "SEHBP NJEA Plan Design & Employee Contributions Request (Plan Year 2020)" dated January 21, 2020 and the Aon Q&A memo dated February 17, 2020. The other information included benefit designs, other plan features, provider reimbursement rates, and employee distributions by salary and family tier. Additionally, we have been provided with Aon's 2020 Rate Renewal Report dated August 23, 2019. We have not independently audited or verified this data and other information. If the underlying data or information is inaccurate or incomplete, the results of our analysis may likewise be inaccurate or incomplete.

Future actuarial measurements may differ significantly from the current measurements presented in this analysis due to actual plan experience deviating from the assumptions, and changes in plan provisions, actuarial assumptions, and applicable law. An assessment of the potential range and cost effect of such differences is beyond the scope of this analysis.

Any questions, please let us know.

Sincerely,



Scott Porter, F.S.A., M.A.A.A.
Principal & Consulting Actuary



Jack Burke, F.S.A., M.A.A.A.
Principal & Consulting Actuary



Chris Ruff, F.S.A., M.A.A.A.
Consulting Actuary

Appendix A-1
New Jersey Senate Majority Office
Education Employee Benefit Plan Analysis
Analysis of Educators Plan
Estimated Net Savings for SEHBP Participants

	Starting 2020 Claims ²	Reimbursement Impact ³	Induced Utilization Impact	Paid-to-Allowed Impact	Mandatory Generic/Closed Formulary Impact ⁴	Total Claim Savings ⁵	Employee Contribution Costs ⁶	Net Savings
Educators Plan								
Active	\$1,120 mil.	\$151 mil.	\$11 mil.	\$7 mil.	\$8 mil.	\$177 mil.	(\$94) mil.	\$83 mil.
Early Retiree	\$445 mil.	\$39 mil.	(\$0) mil.	\$1 mil.	\$6 mil.	\$46 mil.	\$0 mil.	\$46 mil.
Medicare Retiree	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.
Total	\$1,565 mil.	\$190 mil.	\$10 mil.	\$8 mil.	\$14 mil.	\$223 mil.	(\$94) mil.	\$129 mil.

- 1) This exhibit is an attachment to the letter dated April 21, 2021 to Mr. Kevin Drennan. Please refer to that letter for more information, including explanatory notes and statements of reliance.
- 2) Starting 2020 claims are provided in Aon's Plan Year 2020 Rate Renewal Recommendation Report dated August 23, 2019, and available at: <https://www.state.nj.us/treasury/pensions/documents/hb/rate-renewal/rate-renewal-school-employees-2020.pdf>
- 3) Milliman has relied on the percentage savings (relative to starting 2020 claims) provided in an Aon letter dated February 17, 2020 and entitled "Responses to Questions from February 13, 2020 Discussion."
- 4) The impact of transition to Optum's mandatory generic prescribing rule and closed formulary were quantified by Optum and provided to Milliman in Aon's February 17, 2020 letter.
- 5) Claims savings are attributable to active employees and early retirees only. Medicare-eligible retirees are not affected by this proposal.
- 6) Employee contribution costs are attributed to active employees only and are estimated assuming that all members are in a medical with MMRx plan design.
- 7) Milliman's work product was prepared solely for New Jersey Senate Majority Office for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work.

Appendix A-2
 New Jersey Senate Majority Office
 Education Employee Benefit Plan Analysis
 Analysis of Educators Plan
 Extrapolated Net Savings for Non-SEHBP Active Participants

	Reimbursement Impact	Induced Utilization Impact	Paid-to-Allowed Impact	Mandatory Generic/Closed Formulary Impact	Total Claim Savings	Employee Contribution Costs	Net Savings
Educators Plan							
Active	\$544 mil.	\$38 mil.	\$27 mil.	\$28 mil.	\$637 mil.	(\$337) mil.	\$300 mil.
Early Retiree	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.
Medicare Retiree	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.
Total	\$544 mil.	\$38 mil.	\$27 mil.	\$28 mil.	\$637 mil.	(\$337) mil.	\$300 mil.

- 1) This exhibit is an attachment to the letter dated April 21, 2021 to Mr. Kevin Drennan. Please refer to that letter for more information, including explanatory notes and statements of reliance.
- 2) Extrapolated savings for active employees based on ratio of number of SEHBP employee headcount of 47,227 indicated in Aon's January 21, 2020 memo and total count of SEHBP and non-SEHBP employee headcount of 217,131 noted in the June 30, 2019 GASB 75 report. This results in estimated savings for non-SEHBP employees to be 3.6 times the estimated savings for SEHBP employees noted in Appendix A-1.
- 3) Based on anecdotal information provided by the Senate Majority Office and the NJEA, underlying populations, provider reimbursement levels and prescription drug benefits, non-SEHBP employers provide benefits similar to the SEHBP such that savings is anticipated to be consistent with that estimated for SEHBP employees. To the extent that current reimbursement levels are less or mandatory generic prescribing or different formularies exist among non-SEHBP employers, the extrapolated savings would be less.
- 4) Required contributions by non-SEHBP employees may be similar to those required by Chapter 44 reducing the incentive to elect the Educators Plan.
- 5) Many districts may have negotiated lower employee contributions than Chapter 78 reflecting caps, percentage reductions and stipends. All else equal, since contributions for these employees are lower than the full Chapter 78 contributions, the offsetting costs (i.e. contribution reductions) may be lower, resulting in higher net savings.
- 6) Analysis above excludes any extrapolated savings for employers who provide medical benefits through SEHBP, but prescription drug benefits outside of SEHBP. Per the Aon Q&A memo, 37& of SEHBP participants receive prescription drug benefits outside of the SEHBP. Additional savings due to the closed formulary and mandatory generic prescribing to this group may produce an additional \$5 million in savings.
- 7) Milliman's work product was prepared solely for New Jersey Senate Majority Office for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work.

Appendix A-3

New Jersey Senate Majority Office
Education Employee Benefit Plan Analysis
Analysis of Educators Plan

Total Estimated and Extrapolated Net Savings for SEHBP and Non-SEHBP Participants

	Reimbursement Impact	Induced Utilization Impact	Paid-to-Allowed Impact	Mandatory Generic/Closed Formulary Impact	Total Claim Savings	Employee Contribution Costs	Net Savings
Educators Plan							
Active	\$695 mil.	\$49 mil.	\$34 mil.	\$36 mil.	\$814 mil.	(\$431) mil.	\$383 mil.
Early Retiree	\$39 mil.	(\$0) mil.	\$1 mil.	\$6 mil.	\$46 mil.	\$0 mil.	\$46 mil.
Medicare Retiree	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.	\$0 mil.
Total	\$733 mil.	\$48 mil.	\$35 mil.	\$43 mil.	\$860 mil.	(\$431) mil.	\$429 mil.

- 1) This exhibit is an attachment to the letter dated April 21, 2021 to Mr. Kevin Drennan. Please refer to that letter for more information, including explanatory notes and statements of reliance.
- 2) Analysis above excludes any extrapolated savings for employers who provide medical benefits through SEHBP, but prescription drug benefits outside of SEHBP. Per the Aon Q&A memo, 37 & of SEHBP participants receive prescription drug benefits outside of the SEHBP. Additional savings due to the closed formulary and mandatory generic prescribing to this group may produce an additional \$5 million in savings.
- 3) Please refer to other important notes on Appendix A-1 and Appendix A-2.
- 4) Milliman's work product was prepared solely for New Jersey Senate Majority Office for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work.

Appendix B
New Jersey Senate Majority Office
Education Employee Benefit Plan Analysis
Estimated 2020 Claims Savings* from Proposed Benefit Reductions for SEHBP Participants
Plan Level Analysis

Populations	Membership		Proj Dollars		Current Plan Designs	
	(a)	(b)	(c)	(d)	(e)	(e)
	Members	Claims ⁴	Premiums	Current Paid-to-Allowed	Current Induced Utilization	
School Employees						
Actives						
NJ Direct15	33,696	301,409,000	310,764,000	96.0%	1,045	
NJ Direct10	59,892	613,800,000	578,623,000	96.8%	1,060	
Aetna Freedom10	3,450	35,575,000	33,220,000	96.8%	1,060	
Aetna Freedom15	1,268	11,727,000	11,846,000	96.0%	1,047	
Aetna HMO	3,323	26,894,000	30,734,000	97.7%	1,068	
Direct 0	11,888	91,994,000	91,841,000	97.8%	1,084	
NJ Direct1525	2,117	18,491,000	19,404,000	95.3%	1,031	
Subtotal of Modeled Plans						
Other Plans	2,680	20,504,000	22,634,000	96.7%	1,058	
Actives Subtotal	118,314	1,120,394,000	1,099,066,000			
Early Retirees						
NJ Direct15	1,804	24,139,000	15,350,000	96.6%	1,043	
NJ Direct10	26,110	340,327,000	278,184,000	96.3%	1,059	
Aetna Freedom10	2,745	35,364,000	82,367,000	96.3%	1,059	
Aetna Freedom15	180	2,315,000	7,531,000	95.5%	1,044	
Aetna HMO	1,952	21,411,000	20,508,000	97.2%	1,067	
Direct 0	279	3,155,000	2,550,000	97.0%	1,088	
NJ Direct1525	1,341	16,634,000	11,980,000	95.2%	1,036	
Subtotal of Modeled Plans						
Other Plans	119	1,548,000	1,193,000			
Early Retirees Subtotal	34,530	444,893,000	419,673,000	96.2%	1,057	
Medicare Retirees						
NJ Direct15	-	-	-	95.6%	1,043	
NJ Direct10	9,739	570,780,000	35,370,000	96.3%	1,059	
Aetna Freedom10	99,710	53,846,000	385,724,000	96.3%	1,059	
Aetna Freedom15	6,963	45,759,000	29,634,000	95.5%	1,044	
Aetna HMO	-	-	-	97.2%	1,067	
Direct 0	-	-	-	97.0%	1,088	
NJ Direct1525	18,978	126,126,000	96,067,000	95.2%	1,036	
Subtotal of Modeled Plans						
Other Plans	206	1,425,000	1,001,000			
Medicare Retirees Subtotal	135,596	797,936,000	547,796,000	96.1%	1,054	
Retirees Subtotal	170,126	1,242,829,000	967,469,000			
Total	288,440	2,363,223,000	2,066,535,000	96.4%	1,057	

Notes

- 1) This exhibit is an attachment to a letter dated April 21, 2021 to Mr. Kevin Drennan. Please refer to that letter for more information, including explanatory notes and statements of reliance.
- 2) Claim savings are associated with the adoption of the NJ Educators Plan.
- 3) Source for members, projected claim, and premium dollars from the Aon "Plan Year 2020 Rate Renewal Recommendation Report" dated August 23, 2019. Claims are the sum of incurred medical claims, copayments, and prescription drug claims, less prescription drug rebates.
- 4) See Appendix E for details on the cost sharing of the NJ Educators Plan.
- 5) Total Claims Adjustment Factor is the product of Reimbursement Impact, Induced Utilization Impact, Paid-to-Allowed Impact, and Mandatory Generic/Closed Formulary Impact. We relied on Aon's memo dated 2/17/2020 for the impact on claims as a result of mandatory generics and formulary changes.
- 6) Milliman's work product was prepared solely for New Jersey Senate Majority Office for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work.

Appendix B
New Jersey Senate Majority Office
Education Employee Benefit Plan Analysis
Estimated 2020 Claims Savings* from Proposed Benefit Reductions for SEHBP Participants
Plan Level Analysis

Populations	Target Plan Designs @ Plan Educators ¹										
	(f)	(g)	(h)	(i)	(j)	(k)	(l)=(h)*(j)*(k)	(m)=(b)*(l)	(n)=(b)-(m)	(o)=(c)-(n)	(p)=(o)/(c)
	Educators Paid-to-Allowed Ratio	Educators Induced Utilization	Reimbursement Impact	Induced Utilization Impact	Paid-to-Allowed Impact	Mandatory Generic/Closed Formulary Impact	Total Claims Adjustment Factor ²	Projected Claims	Plan Educators Claims Savings	Projected Premiums	Premium Adjustment Factor
School Employees											
Actives											
NJ Direct15	96.0%	1.046	0.848	1.000	1.000	0.991	0.841	253,362,263	46,026,737	262,737,263	0.845
NJ Direct10	96.0%	1.046	0.849	0.987	0.990	0.991	0.823	504,564,501	109,235,499	469,387,501	0.811
Aetna Freedom10	96.0%	1.046	0.850	0.990	0.990	0.990	0.823	29,273,711	6,301,289	26,918,711	0.810
Aetna Freedom15	96.0%	1.046	0.853	1.001	1.000	0.988	0.844	9,896,189	1,830,811	10,015,189	0.845
Aetna HMO	96.0%	1.046	1.000	1.002	0.983	0.974	0.944	26,194,959	699,041	30,034,959	0.977
Direct 0	96.0%	1.046	1.000	0.962	0.982	1.000	0.944	86,858,086	5,135,914	86,705,086	0.944
NJ Direct1525	96.0%	1.046	0.849	1.012	1.009	0.990	0.858	15,870,816	2,620,184	16,783,816	0.865
Subtotal of Modeled Plans			0.868	0.990	0.992	0.990	0.844	17,304,636	3,199,364	19,434,636	0.859
Other Plans			151,144,374	10,562,263	7,466,401	7,875,802	177,048,841	943,345,159	177,048,841	922,017,159	0.839
Actives Subtotal			0.906	1.008	1.005	0.985	0.905	21,845,178	2,293,822	13,056,178	0.851
Early Retirees			0.909	0.997	0.996	0.984	0.867	302,038,194	38,288,806	239,895,194	0.862
NJ Direct15	96.0%	1.046	0.909	0.996	0.996	0.984	0.868	31,387,404	3,976,586	78,380,404	0.952
Aetna Freedom10	96.0%	1.046	0.908	1.010	1.006	0.984	0.907	2,100,271	214,729	7,316,271	0.971
Aetna Freedom15	96.0%	1.046	1.000	1.062	0.985	1.033	0.985	22,111,507	(700,507)	21,208,507	1.034
Aetna HMO	96.0%	1.046	1.000	0.970	0.989	1.000	0.959	3,024,641	130,359	2,419,641	0.949
Direct 0	96.0%	1.046	0.907	1.012	1.010	0.985	0.913	15,179,642	1,454,358	10,535,642	0.879
NJ Direct1525	96.0%	1.046	0.911	0.999	0.996	0.987	0.894	1,383,911	164,089	1,028,911	0.862
Subtotal of Modeled Plans			38,512,039	(141,376)	959,145	6,482,443	45,822,251	399,070,749	45,822,251	373,850,749	0.891
Other Plans			1.000	1.000	1.000	1.000	1.000	-	-	-	1.000
Early Retirees Subtotal			1.000	1.000	1.000	1.000	1.000	570,760,000	-	35,370,000	1.000
Medicare Retirees			1.000	1.000	1.000	1.000	1.000	53,846,000	-	385,724,000	1.000
NJ Direct15	96.0%	1.046	1.000	1.000	1.000	1.000	1.000	45,759,000	-	29,634,000	1.000
Aetna Freedom10	96.0%	1.046	1.000	1.000	1.000	1.000	1.000	-	-	-	1.000
Aetna Freedom15	96.0%	1.046	1.000	1.000	1.000	1.000	1.000	-	-	-	1.000
Aetna HMO	96.0%	1.046	1.000	1.000	1.000	1.000	1.000	-	-	-	1.000
Direct 0	96.0%	1.046	1.000	1.000	1.000	1.000	1.000	-	-	-	1.000
NJ Direct1525	96.0%	1.046	1.000	1.000	1.000	1.000	1.000	-	-	-	1.000
Subtotal of Modeled Plans			1.000	1.000	1.000	1.000	1.000	1,425,000	-	1,001,000	1.000
Other Plans			-	-	-	-	1.000	797,936,000	-	547,796,000	1.000
Medicare Retirees Subtotal			-	-	-	-	1.000	1,197,006,749	45,822,251	921,646,749	1.000
Retirees Subtotal			0.906	2,140,351,908	222,871,092	1,843,663,908	0.892				
Total											

Notes

- 1) This exhibit is an attachment to a letter dated April 21, 2021 to Mr. Kevin Drennan. Please refer to that letter for more information, including explanatory notes and statements of reliance.
- 2) Claim savings are associated with the adoption of the NJ Educators Plan.
- 3) Source for members, projected claim, and premium dollars from the Aon "Plan Year 2020 Rate Renewal Recommendation Report" dated August 23, 2019. Claims are the sum of incurred medical claims, capitations, and prescription drug claims, less prescription drug rebates.
- 4) See Appendix E for details on the cost sharing of the NJ Educators Plan.
- 5) Total Claims Adjustment Factor is the product of Reimbursement Impact, Induced Utilization Impact, Paid-to-Allowed Impact, and Mandatory Generic/Closed Formulary Impact. We relied on Aon's memo dated 2/17/2020 for the impact on claims as a result of mandatory generics and formulary changes.
- 6) Milliman's work product was prepared solely for New Jersey Senate Majority Office for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work.

Appendix C
New Jersey Senate Majority Office
Education Employee Benefit Plan Analysis
Illustration of Application of Premium Reduction Factors

SEHBP NJ DIRECT 10⁴ to Educators Plan

	Medical w/ MMRx		Educators Plan	
	NJD 10	Premium Adjustment Factor	Adjusted Rates	
SEHBP Actives				
Single	\$ 12,639	0.811	\$	10,253
Member/Spouse	\$ 25,278	0.811	\$	20,506
Family	\$ 36,147	0.811	\$	29,323
Parent Child	\$ 23,508	0.811	\$	19,070
Early Retirees				
Single	\$ 15,306	0.862	\$	13,199
Member/Spouse	\$ 33,366	0.862	\$	28,774

SEHBP NJ DIRECT 15⁴ to Educators Plan

	Medical w/ MMRx		Educators Plan	
	NJD 15	Premium Adjustment Factor	Adjusted Rates	
SEHBP Actives				
Single	\$ 12,032	0.845	\$	10,173
Member/Spouse	\$ 24,063	0.845	\$	20,344
Family	\$ 34,411	0.845	\$	29,093
Parent Child	\$ 22,379	0.845	\$	18,920
Early Retirees				
Single	\$ 14,552	0.851	\$	12,377
Member/Spouse	\$ 31,274	0.851	\$	26,601

Notes:

- (1) This exhibit is an attachment to a letter dated April 21, 2021 to Mr. Kevin Drennan. Please refer to that letter for more information, including explanatory notes and statements of reliance.
- (2) All premium rates were provided by the NJ Office of Legislative Services and are for plan year 2020.
- (3) New Jersey Direct plans as administered by Horizon BCBS of New Jersey.
- (4) Note that the SEHBP premiums shown above are medical with MMRx coverage. The premium adjustment factor is an aggregate result of savings associated with the medical plan, drug card plan, and MMRx plan. Claims data specifically for members choosing the medical with MMRx option (as opposed to medical plus the freestanding drug card plan) was not available.
- (5) Milliman's work product was prepared solely for New Jersey Senate Majority Office for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work.

Appendix D
New Jersey Senate Majority Office
2020 Provider Reimbursement Rates for All Medical Services
Rates are Expressed as a Percent of Medicare Allowed

Employee Category	In-Network	Out-of-Network
Current Except Direct 0	125-175%	350%
Current Direct 0	125-175%	200%
Educators Plan	125-175%	200%

- 1) This exhibit is an attachment to a letter dated April 21, 2021 to Mr. Kevin Drennan. Please refer to that letter for more information, including explanatory notes and statements of reliance.
- 2) Out of network reimbursement level for Current Plan (excluding Direct 0) is approximated at 350% of Medicare Allowed. Aon's 1/21/2020 memo indicated that the current reimbursement level is 90% of Fair Health. Milliman has not estimated the potential difference in these levels.
- 3) Provider reimbursement under the Direct 0 and Educators Plan for physical therapy, acupuncture, and chiropractic services follows the limitations imposed on SHBP plans, which can be viewed at: <https://www.state.nj.us/treasury/pensions/documents/hb/oe2020/sbcs/sbc049.pdf>
- 4) Milliman's work product was prepared solely for New Jersey Senate Majority Office for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work.

Appendix E
New Jersey Senate Majority Office
Education Employee Benefit Plan Analysis
Plan Year 2020 Employee Plan Option Summary

	NJ Direct 10 96.8%	NJ Direct 15 96.0%	NJ Direct 0 97.8%	Educators Plan 96.0%
Actuarial Value				
In-Network				
Deductible (Single/Family)	\$0	\$0	\$0	\$0
Coinsurance OOP Maximum (Single/Family)	n/a	\$400/\$1,000	n/a	n/a
Total In-Network OOP Maximum (Single/Family)	\$400/\$1,000	\$6,320/\$12,640	\$4,000/\$1,000	\$5,000/\$1,000
Overall Coinsurance	10% coinsurance after deductible			
PCP	\$10, not subject to ded./coins	\$15, not subject to ded./coins	\$0, not subject to ded./coins	\$10, not subject to ded./coins
Specialist	\$10, not subject to ded./coins	\$15, not subject to ded./coins	\$0, not subject to ded./coins	\$15, not subject to ded./coins
Emergency Room	\$25 copay, waived if admitted	\$50 copay, waived if admitted	\$50 copay, waived if admitted	\$125 copay, waived if admitted
Inpatient Hospital	\$0, not subject to ded./coins			
Outpatient Facility	\$0, not subject to ded./coins			
Urgent Care	\$10, not subject to ded./coins	\$15, not subject to ded./coins	\$0, not subject to ded./coins	\$15, not subject to ded./coins
Out-of-Network				
Deductible (Single/Family)	\$100/\$250	\$100/\$250	\$100/\$250	\$350/\$700
Total In-Network OOP Maximum (Single/Family)	\$2,000/\$5,000	\$2,000/\$5,000	\$2,000/\$5,000	\$2,000/\$5,000
Overall Coinsurance	20% coinsurance after deductible	30% coinsurance after deductible	20% coinsurance after deductible	30% coinsurance after deductible
Emergency Room	\$25 copay, waived if admitted	\$50 copay, waived if admitted	\$50 copay, waived if admitted	\$125 copay, waived if admitted
Physical Therapy, Acupuncture, Chiropractic Services	Overall Coinsurance Rate	Overall Coinsurance Rate	Overall Coinsurance Rate	Reimbursement subject to SHBP limits
Prescription Drug - Drug Card				
Deductible (Single/Family)	\$0	\$0	\$0	\$0
OOP Maximum (Single/Family)	\$1,630/\$3,260	\$1,630/\$3,260	\$1,630/\$3,260	\$1,600/\$3,200
Retail - Generic	\$3, not subject to ded./coins	\$3, not subject to ded./coins	\$3, not subject to ded./coins	\$5, not subject to ded./coins
Retail - Preferred Brand	\$10, not subject to ded./coins			
Retail - Non-Preferred Brand	\$10, not subject to ded./coins			
Retail - Brand w/ Generic available	Brand or Generic Copay Apply	Brand or Generic Copay Apply	Brand or Generic Copay Apply	Member pays difference in cost between generic and brand, plus brand copayment
Mail - Generic	\$5, not subject to ded./coins	\$5, not subject to ded./coins	\$5, not subject to ded./coins	\$10, not subject to ded./coins
Mail - Preferred Brand	\$15, not subject to ded./coins	\$15, not subject to ded./coins	\$15, not subject to ded./coins	\$20, not subject to ded./coins
Mail - Non-Preferred Brand	\$15, not subject to ded./coins	\$15, not subject to ded./coins	\$15, not subject to ded./coins	\$20, not subject to ded./coins
Mail - Brand w/ Generic available	Brand or Generic Copay Apply	Brand or Generic Copay Apply	Brand or Generic Copay Apply	Member pays difference in cost between generic and brand, plus brand copayment
Prescription Drug - MMRs				
Deductible (Single/Family)	\$0	\$0	\$0	\$0
OOP Maximum (Single/Family)	\$400/\$1,000	\$400/\$1,000	\$500/\$1,000	\$1,600/\$3,200
Retail - Generic	10% coinsurance after deductible	10% coinsurance after deductible	10% coinsurance after deductible	\$5, not subject to ded./coins
Retail - Preferred Brand	10% coinsurance after deductible	10% coinsurance after deductible	10% coinsurance after deductible	\$10, not subject to ded./coins
Retail - Non-Preferred Brand	10% coinsurance after deductible	10% coinsurance after deductible	10% coinsurance after deductible	\$10, not subject to ded./coins
Retail - Brand w/ Generic available	10% coinsurance after deductible	10% coinsurance after deductible	10% coinsurance after deductible	Member pays difference in cost between generic and brand, plus brand copayment
Mail - Generic	10% coinsurance after deductible	10% coinsurance after deductible	10% coinsurance after deductible	\$10, not subject to ded./coins
Mail - Preferred Brand	10% coinsurance after deductible	10% coinsurance after deductible	10% coinsurance after deductible	\$20, not subject to ded./coins
Mail - Non-Preferred Brand	10% coinsurance after deductible	10% coinsurance after deductible	10% coinsurance after deductible	\$20, not subject to ded./coins
Mail - Brand w/ Generic available	10% coinsurance after deductible	10% coinsurance after deductible	10% coinsurance after deductible	Member pays difference in cost between generic and brand, plus brand copayment

Notes:

- The following was assumed when modeling the benefits above:
 - "After deductible" means that a member pays the entire allowed amount up to the deductible, with the difference between the allowed amount and copay accumulating toward the deductible. Once the deductible is met, the member pays only the copay.
 - Otherwise, if a copay for a given service is not followed by "not subject to deductible" or "after deductible," the deductible subjectivity of that service is consistent with the deductible subjectivity of PCP and specialist office visits.
 - All services not specified as being subject to a particular form of cost sharing are subject to the deductible (in/out of network, as appropriate), coinsurance, and out-of-pocket maximum.
- Educators Plan as established by P.L. 2020, Chapter 44. It is uncertain whether the Educators plan was intended to replace the 10% coinsurance of the MMRx drug benefit with the copays of the Rx Card drug benefit. We do not believe that this change is significant.
- For the Direct 0 and Educators Plans, out-of-network provider reimbursement for physical therapy, acupuncture, and chiropractic services are subject to SHBP limits, which can be found at: <https://www.state.nj.us/treasury/pensions/documents/hb/022020/sbes/sbc049.pdf>
- Milliman's work product was prepared solely for New Jersey Senate Majority Office for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work.

Appendix F
New Jersey Senate Majority Office
Plan Year 2020 Educators Plan Employee Contribution Schedule

		Contribution as a Percentage of Salary			
Salary from: (inclusive)	Salary to: (exclusive)	Single	Parent/Child(ren)	Member/Spouse	Family
\$0	\$40,000	1.70%	2.20%	2.80%	3.30%
\$40,001	\$50,000	1.90%	2.50%	3.30%	3.90%
\$50,001	\$60,000	2.20%	2.80%	3.90%	4.40%
\$60,001	\$70,000	2.50%	3.00%	4.40%	5.00%
\$70,001	\$80,000	2.80%	3.30%	5.00%	5.50%
\$80,001	\$90,000	3.00%	3.60%	5.50%	6.00%
\$90,001	\$100,000	3.30%	3.90%	6.00%	6.60%
\$100,001	\$125,000	3.60%	4.40%	6.60%	7.20%
\$125,000	or greater	3.60%	4.40%	6.60%	7.20%

- 1) This exhibit is an attachment to a letter dated April 21, 2021 to Mr. Kevin Drennan. Please refer to that letter for more information, including explanatory notes and statements of reliance.
- 2) The contribution schedule applies to active employees and early retirees not eligible for Medicare who elect the New Jersey Educators Health Plan. In no case shall an employee contribution exceed the maximum amount for an employee contribution as calculated under Chapter 78.
- 3) Milliman's work product was prepared solely for New Jersey Senate Majority Office for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work.

Appendix C
New Jersey Senate Majority Office
Education Retiree Present Value Analysis for Active Pre-65 Employees
Estimated Impact of Adopting Educators Plan

	Current Plan and Chapter 78 Contribution Schedule	Educators Plan Impact	
		Totals	% Difference
Totals - Pre-65 Only			
Gross Premiums	\$19,941 mil.	\$17,265 mil.	(13.4)%
Retiree Contributions	\$3,939 mil.	\$627 mil.	(84.1)%
Subtotal	\$16,002 mil.	\$16,638 mil.	4.0%
Contribution % of Premium	19.8%	3.6%	
Employees Subject to Chapter 78 Schedule			
Gross Premiums	\$18,411 mil.	\$15,941 mil.	(13.4)%
Retiree Contributions	\$3,939 mil.	\$627 mil.	(84.1)%
Subtotal	\$14,473 mil.	\$15,313 mil.	5.8%
Contribution % of Premium	21.4%	3.9%	
Employees Not Subject to Chapter 78 Schedule			
Gross Premiums	\$1,529 mil.	\$1,324 mil.	(13.4)%
Retiree Contributions	\$0 mil.	\$0 mil.	0.0%
Subtotal	\$1,529 mil.	\$1,324 mil.	(13.4)%
Contribution % of Premium	0%	0%	

Notes:

- (1) This exhibit is an attachment to a letter dated April 21, 2021 to Mr. Kevin Drennan. Please refer to that letter for more information, including explanatory notes and statements of reliance.
- (2) Present values are not intended to be OPEB liability as determined by GASB 75, but rather an illustrative present value of the premium and the associated contribution schedule to understand the long-term impact of modifying the health plans and contribution schedules. While the present value dollars are informative, we believe the percentages presented, either the contribution as a percent of the premium or the percentage differences to be more informative of the impact of the proposed changes.
- (3) Estimated present values are based on July 1, 2017 individual TPAF data and age/service extrapolated July 1, 2017 PERS Local data, adjusted as follows to reflect the total number of SEHBP and non-SEHBP employees, all anticipated to be covered by the SEHBP as a retiree. TPAF data was multiplied by 102.6% to account for TPAF and ABP participants whereas PERS Local data was multiplied by 49.2% to account for other participants, as noted in June 30, 2017 GASB 75 Aon report. No adjustment has been made to project results to a current year. A projection would result in a higher number of current employees subject to the Chapter 78 contribution schedule.
- (4) Present value is based on 2020 premiums as noted in Appendix C along with other simplifying assumptions: 5.0% annual trend, 3.5% discount rate, 100% of active employees elect coverage, employees elect either Direct 10 or Direct 15 coverage at retirement based on current active election, 75%/55% of male and female employees elect to cover a dependent spouse at retirement and all demographic assumptions proposed in either the 2018 TPAF Experience Study produced by Cheiron January 2020 or the 2019 PERS Experience Study produced by Cheiron February 2020.
- (5) Appendix F details the proposed compensation and service based contribution schedules
- (6) Milliman's work product was prepared solely for New Jersey Senate Majority Office for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work.

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Senate President Stephen M. Sweeney
and Assembly Speaker Craig J. Coughlin

**In re Complaint Filed by the
Franklin Township Board of
Education Regarding P.L. 2020,
Chapter 44.**

**In re Complaint Filed by the
Gloucester City Board of
Education Regarding P.L. 2020,
Chapter 44.**

**In re Complaint Filed by the
Lower Township Elementary
Board of Education Regarding
P.L. 2020, Chapter 44.**

**STATE OF NEW JERSEY
COUNCIL ON LOCAL MANDATES
COLM-0001-21**

Consolidated Action

CERTIFICATION OF LEON J. SOKOL, ESQ.
IN OPPOSITION TO CLAIMANTS'
APPLICATION FOR PRELIMINARY
INJUNCTIVE RELIEF

Leon J. Sokol, Esq. certifies to the Council of Local Mandates as follows:

1. I am an attorney-at-law in the State of New Jersey and a partner with the law firm of Cullen and Dykman LLP, attorneys for Respondents Senate President Stephen M. Sweeney and Assembly Speaker Craig J. Coughlin. I make this Certification in support of Respondents' opposition to Claimants' application for Preliminary Injunctive Relief.
2. Annexed hereto as Exhibit "A" is a true and correct copy of L. 2020, c. 44.
3. Annexed hereto as Exhibit "B" is a true and correct copy of the Statement of the Assembly Appropriations Committee dated June 26, 2020 regarding S. 2273 (later enacted as L. 2020, c. 44)

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Leon J. Sokol
Leon J. Sokol

Dated: April 23, 2021

EXHIBIT A

CHAPTER 44
(CORRECTED COPY)

AN ACT concerning the health care benefits plans provided by the School Employees' Health Benefits Program and eligible employers that do not participate in the program, and supplementing P.L.2007, c.103 (C.52:14-17.46.1 et seq.) and P.L.1979, c.391 (C.18A:16-12 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.52:14-17.46.13 Health care benefit plans offered.

1. This section shall apply to the School Employees' Health Benefits Program (SEHBP) and to those employers defined pursuant to section 32 of P.L.2007, c.103 (C.52:14-17.46.2) that participate in the program.

a. (1) Notwithstanding the provisions of any other law, rule, or regulation to the contrary, beginning with the plan year that commences January 1, 2021 and for each plan year thereafter, the School Employees' Health Benefits Program shall offer only three plans that provide medical and prescription drug benefits for employees, and retirees who are not Medicare-eligible, and their dependents if any. All other plans offered prior to January 1, 2021 for employees, and retirees who are not Medicare-eligible, and their dependents if any, shall be terminated.

The three plans shall be the New Jersey Educators Health Plan as developed by the School Employees' Health Benefits Plan Design Committee in accordance with subsection f. of this section which sets forth the plan design of the New Jersey Educators Health Plan; the SEHBP NJ Direct 10 plan as adopted and implemented by the School Employees' Health Benefits Commission for the plan year that began January 1, 2020; and the SEHBP NJ Direct 15 plan as adopted and implemented by the School Employees' Health Benefits Commission for the plan year that began January 1, 2020.

Employers that participate in the School Employees' Health Benefits Program shall retain the ability to enter the program for medical only plans and may separately purchase pharmacy and dental benefits outside of the program without limitation or restriction.

(2) Only the plans set forth in this section shall be offered by the program regardless of any collective negotiations agreement between a participating employer and its employees in effect on the effective date of this act, P.L.2020, c.44, that provides for enrollment in other plans that were offered by the program prior to January 1, 2021.

b. Prior to January 1, 2021, the program, through the Division of Pensions and Benefits in the Department of the Treasury, shall provide for an enrollment period during which all employees who commenced employment prior to the effective date of this act shall be required to select affirmatively one of the three plans specified in subsection a. of this section. If an employee fails to select affirmatively a plan during this enrollment period, the program shall enroll the employee, and the employee's dependents if any, in the New Jersey Educators Health Plan for the plan year beginning January 1, 2021 and ending December 31, 2021.

During the enrollment period, any person who is enrolled in a plan offered by the program and who is paying the full cost of health care benefits coverage shall also be required to select affirmatively one of the three plans specified in subsection a. of this section. If a person fails to select affirmatively a plan during this enrollment period, the program shall enroll the person, and the person's dependents if any, in the New Jersey Educators Health Plan for the plan year beginning January 1, 2021 and ending December 31, 2021. Any such

person shall continue to pay the full cost of coverage and shall not be subject to the contribution schedule or any mandatory enrollment period as set forth in this section.

c. (1) Beginning on January 1, 2021, an employee commencing employment on or after the effective date of this act but before January 1, 2028 who does not waive coverage shall be enrolled by the program, with the employee's dependents if any, in the New Jersey Educators Health Plan, or the Garden State Health Plan if selected by the employee. The employee shall remain enrolled in either the New Jersey Educators Health Plan or the Garden State Health Plan selected by the employee at the annual open enrollment for each plan year through the plan year that ends December 31, 2027, provided that the employee during this period may waive coverage as an employee and select and change the type of coverage received under the plan following a qualifying life event, in accordance with the program regulations. For the plan year beginning January 1, 2028, the employee may select, during any open enrollment period or at such other times or under such conditions as the program may provide, any plan offered by the program.

(2) For the plan year beginning January 1, 2021, the program shall enroll a retiree who is not Medicare-eligible, and the retiree's dependents if any, in the New Jersey Educators Health Plan for health care benefits coverage as a retiree, if the retiree does not waive coverage. The retiree shall remain enrolled in that plan for each plan year through the plan year that ends December 31, 2027 or until the retiree becomes eligible for Medicare, whichever comes first. The retiree who becomes eligible for Medicare shall no longer be eligible for enrollment in the New Jersey Educators Health Plan, except that any dependent of the retiree who is not eligible for Medicare may remain eligible for coverage under the New Jersey Educators Health Plan. For the plan year beginning January 1, 2028, that retiree who is not Medicare-eligible may select, during any open enrollment period or at such other times or under such conditions as the program may provide, any plan offered by the program.

(3) Except as otherwise provided in this subsection or subsection b. of this section, selection of a plan shall be at the sole discretion of the employee or retiree who is not Medicare-eligible.

d. Beginning July 1, 2021 and for each plan year thereafter, the program shall offer a fourth plan to be called the Garden State Health Plan. The plan shall be developed by the School Employees' Health Benefits Plan Design Committee. If the committee does not adopt a design for the Garden State Health Plan by December 31, 2020, the Division of Pensions and Benefits in the Department of the Treasury shall develop the Garden State Health Plan.

The Garden State Health Plan shall provide medical and prescription drug benefits that are equivalent to the level of medical and prescription drug benefits provided by the New Jersey Educators Health Plan, except that the benefits under the Garden State Health Plan shall be available only from providers located in the State of New Jersey.

Access to a service provider that is located outside of the State shall be available only under such terms, conditions, restrictions, and limitations as the plan design committee or the division, as appropriate, shall provide in the plan governing documents.

Employers that participate in the School Employees' Health Benefits Program shall retain the ability to enter the program for medical only plans and may separately purchase pharmacy and dental benefits outside of the program without limitation or restriction.

e. The plan design of the New Jersey Educators Health Plan, the Garden State Health Plan, the NJ Direct 10 plan, and the NJ Direct 15 plan as those plan designs are specified in subsections a., d., and f. of this section shall remain unchanged until December 31, 2027. No change in the plan design of those plans shall be made before that date unless such a change

in plan design is required by federal or State law to governmental health care benefits plans or to both governmental and non-governmental health care benefits plans.

For the plan year that commences January 1, 2028 and for each plan year thereafter, the plan design of the New Jersey Educators Health Plan, the Garden State Health Plan, the NJ Direct 10 plan, and the NJ Direct 15 plan as those plan designs are specified in subsections a., d., and f. of this section may be modified by the School Employees' Health Benefits Plan Design Committee.

Modifications to plan design of the plans set forth in this section made by the School Employees' Health Benefits Plan Design Committee or the State Treasurer pursuant to section 7 of this act shall be implemented by the program for the purposes of this section commencing January 1, 2024.

f. The plan design of the New Jersey Educators Health Plan shall be the following:

In Network Benefits	Coverage
Member Coinsurance:	10%, Applies Only to Emergency Transportation Care and Durable Medical Equipment
Deductible:	N/A
Out-of-Pocket Maximum:	\$500 Single/ \$1,000 Family (covers all in network copayments, coinsurance, and deductible)
Emergency Room Copayment:	\$125 (To be Waived if Admitted)
PCP Office Visit Copayment:	\$10
Specialist Office Visit Copayment	\$15
Out-of-Network Benefits	Coverage
Member Coinsurance:	30% of the Out-of-Network Fee Schedule
Deductible:	\$350 / \$700
Out-of-Pocket Maximum:	\$2,000 Single / \$5,000 Family
Routine Lab:	Paid at Out-of-Network Benefit Level

Out-of-Network Fee Schedule: 200% of CMS - Medicare

Pharmacy

Out-of-Pocket Maximum: \$1,600 Single / \$3,200 Family (Indexed Annually Pursuant to Federal Law)

Generic Copayment: \$5 Retail 30 Day Supply / \$10 Mail 90 Day Supply

Brand Copayment: \$10 Retail 30 Day Supply/ \$20 Mail 90 Day Supply

Mandatory Generic: Member Pays Difference in Cost Between Generic and Brand, Plus Brand Copayment

Formulary: Closed Formulary as contracted with the Pharmacy Benefit Manager and the School Employees' Health Benefits Commission

Other

Chiropractic, Physical Therapy, and Acupuncture: Subject to the same Out-of-Network Limits as for the State Health Benefits Program as were in effect on June 1, 2020 to take effect as of July 1, 2020, or as soon thereafter as reasonably practicable.

Under a patient centered medical home model, there shall be no office visit copay for primary care for participants who select and commit to a patient centered medical home for primary care in accordance with plan rules and regulations.

g. Any plan offered by the School Employees' Health Benefits Program shall require that chiropractic, physical therapy, and acupuncture benefits shall be subject to the same out-of-network limits as for the State Health Benefits Program that were in effect on June 1, 2020 to take effect as of July 1, 2020 or as soon thereafter as reasonably practicable.

C.52:14-17.46.14 Annual contribution from employee, retiree.

2. a. Each employee, and retiree who is not Medicare-eligible and who is required by another provision of law to contribute in retirement toward the cost of health care benefits coverage under the program, shall contribute annually toward the cost of health care benefits coverage for the employee and retiree, and dependents if any, under the New Jersey

Educators Health Plan offered by the School Employees' Health Benefits Program an amount equal to a percentage of the employee's annual base salary or retiree's annual retirement allowance, including any cost of living adjustments to that allowance. The contribution shall be withheld by the employer from the salary of the employee or by the retirement system from the retirement allowance, including any cost of living adjustments to that allowance, of the retiree who is not Medicare-eligible. The percent to be contributed shall be as follows with the retirement allowance including any cost of living adjustments to that allowance:

For Base Salary or Retirement Allowance of \$40,000 or Less: 1.7% for Single Coverage; 2.2% for Parent and Child(ren) Coverage; 2.8% for Employee and Spouse Coverage; and 3.3% for Family Coverage

For Base Salary or Retirement Allowance of more than \$40,000 to \$50,000: 1.9% for Single Coverage; 2.5% for Parent and Child(ren) Coverage; 3.3% for Employee and Spouse Coverage; and 3.9% for Family Coverage

For Base Salary or Retirement Allowance of more than \$50,000 to \$60,000: 2.2% for Single Coverage; 2.8% for Parent and Child(ren) Coverage; 3.9% for Employee and Spouse Coverage; and 4.4% for Family Coverage

For Base Salary or Retirement Allowance of more than \$60,000 to \$70,000: 2.5% for Single Coverage; 3% for Parent and Child(ren) Coverage; 4.4% for Employee and Spouse Coverage; and 5% for Family Coverage

For Base Salary or Retirement Allowance of more than \$70,000 to \$80,000: 2.8% for Single Coverage; 3.3% for Parent and Child(ren) Coverage; 5% for Employee and Spouse Coverage; and 5.5% for Family Coverage

For Base Salary or Retirement Allowance of more than \$80,000 to \$90,000: 3% for Single Coverage; 3.6% for Parent and Child(ren) Coverage; 5.5% for Employee and Spouse Coverage; and 6% for Family Coverage

For Base Salary or Retirement Allowance of more than \$90,000 to \$100,000: 3.3% for Single Coverage; 3.9% for Parent and Child(ren) Coverage; 6% for Employee and Spouse Coverage; and 6.6% for Family Coverage

For Base Salary or Retirement Allowance of more than \$100,000 to \$125,000: 3.6% for Single Coverage; 4.4% for Parent and Child(ren) Coverage; 6.6% for Employee and Spouse Coverage; and 7.2% for Family Coverage

When the base salary or retirement allowance is more than \$125,000, the percent to be contributed shall be the same as for a base salary or retirement allowance of \$125,000.

b. Each employee, and retiree who is not Medicare-eligible and who is required by another provision of law to contribute in retirement toward the cost of health care benefits coverage under the program, shall contribute annually toward the cost of health care benefits coverage for the employee and retiree, and dependents if any, under the Garden State Health Plan offered by the School Employees' Health Benefits Program an amount equal to a

percentage of the employee's annual salary or retiree's annual retirement allowance, including any cost of living adjustments to that allowance. The contribution shall be withheld by the employer from the salary of the employee or by the retirement system from the retirement allowance, including any cost of living adjustments to that allowance, of the retiree who is not Medicare-eligible. The percent to be contributed shall be one-half of the percentage set forth in subsection a. of this section for the salary or retirement allowance range and type of coverage, except that the contribution specified in this subsection shall not be less than the minimum annual contribution for health care benefits coverage of 1.5% of salary or retirement allowance, including any cost of living adjustments to that allowance, as required by law.

c. (1) An employee enrolled in the New Jersey Educators Health Plan or the Garden State Health Plan shall be required to pay only the contribution specified in subsection a. or b. of this section, notwithstanding any other provision of law, rule, or regulation to the contrary requiring contributions by employees toward the cost of health care benefits coverage under the program, except as provided in subsection b. of this section. No other contribution may be required by collective negotiations agreement, except as set forth in subsection h. of this section.

(2) Only those retirees who are not Medicare-eligible and who are required by another provision of law to contribute in retirement toward the cost of health care coverage under the program shall be required to pay the contribution specified in subsection a. or b. of this section for coverage under the New Jersey Educators Health Plan or the Garden State Health Plan.

A retiree who is not Medicare-eligible, who is enrolled in the New Jersey Educators Health Plan or the Garden State Health Plan, and who is required by another provision of law to contribute in retirement toward the cost of health care coverage under the program shall be required to pay only the contribution specified in subsection a. or b. of this section, notwithstanding the provisions of section 77 of P.L.2011, c.78 (C.52:14-17.28e), section 3 of P.L.1987, c.384 (C.52:14-17.32f), section 2 of P.L.1992, c.126 (C.52:14-17.32f1), or section 1 of P.L.1995, c.357 (C.52:14-17.32f2) to the contrary requiring contributions by retirees toward the cost of health care benefits coverage under the program, except as provided in subsection b. of this section.

d. Employees who are not enrolled in the New Jersey Educators Health Plan or the Garden State Health Plan shall continue, after the effective date of this act, P.L.2020, c.44, to contribute to health care benefits coverage and those contributions shall be determined in accordance with what is permitted or required by provisions of law.

An employee who is enrolled in a plan other than the New Jersey Educators Health Plan or the Garden State Health Plan shall be required to contribute toward the cost of health care benefits coverage under the program (a) in accordance with a collective negotiations agreement applicable to that employee as negotiated prior to or after the effective date of this act, P.L.2020, c.44, pursuant to the requirements that were set forth in law on the day next preceding that effective date; (b) as may be required at the discretion of the employer; or (c) as required by a provision of law, whichever is applicable to that employee.

With regard to contributions by an employee who is enrolled in a plan other than the New Jersey Educators Health Plan or the Garden State Health Plan, no provision in this section shall be deemed to modify, alter, impair, or terminate the requirement in sections 77 and 78 of P.L.2011, c.78 (C.18A:16-17.2 and C.52:14-17.28e), as applicable, that a public employer and employees who were in negotiations for the collective negotiations agreement to be executed after the employees in that unit had reached full implementation of the premium

share set forth in section 39 of P.L.2011, c.78 (C.52:14-17.28c) shall conduct negotiations concerning contributions for health care benefits as if the full premium share was included in the prior contract. Nothing in this act shall be deemed to modify, alter, impair, or terminate the continued compliance after the effective date of this act with that requirement for negotiations for any collective negotiations agreement for employee contributions for plans other than the New Jersey Educators Health Plan or the Garden State Health Plan.

e. For an employee, the annual base salary paid by the employer for the position held by the employee shall be used to identify the percentage to be used to calculate the annual contribution required under subsections a. and b. of section 2 of this act. For a retiree who is not Medicare-eligible, the annual retirement allowance, including any cost of living adjustments to that allowance, received by the retiree shall be used to identify the percentage to be used to calculate the annual contribution required under subsections a. and b. of section 2 of this act.

f. The annual contribution by an employee or a retiree who is not Medicare-eligible as calculated in accordance with subsection a. or b. of this section shall not exceed the amount as calculated in accordance with section 4 of this act, P.L.2020, c.44 (C.52:14-17.46.16).

g. The contributions required by this section shall apply to employees for whom the employer has assumed a health care benefits payment obligation, to require that such employees pay the amount of contribution specified in this section for health care benefits coverage. The contributions required by this section shall apply to retirees for whom the State has assumed a health care benefits payment obligation but who are required by law to contribute toward the cost of health care benefits coverage under the program, to require that such retirees pay the amount of contribution specified in this section for health care benefits coverage.

h. For the plan year that commences on January 1, 2028 and for each plan year thereafter, the contributions required pursuant to subsections a. and b. of this section for employees enrolled in the New Jersey Educators Health Plan or the Garden State Health Plan may be modified through collective negotiations agreements entered into between the employers who participate in the School Employees' Health Benefits Program and their employees. The contributions required pursuant to subsections a. and b. of this section shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties. Negotiations concerning contributions for health care benefits shall be conducted as if the contributions required pursuant to subsections a. and b. of this section were included in the prior contract. The contribution scheme of percentage of base salary set forth in those subsections may be modified or a new contribution scheme or method other than a percentage of salary may be provided for in accordance with a collective negotiations agreement.

i. Modifications to the contribution rates set forth in this section made by the School Employees' Health Benefits Plan Design Committee or the State Treasurer pursuant to section 7 of this act shall be implemented by the program for the purposes of this section commencing January 1, 2024.

C.52:14-17.46.15 Guidance tool.

3. a. The School Employees' Health Benefits Commission shall prepare, in coordination with the Division of Pensions and Benefits in the Department of the Treasury, a guidance tool to provide employees and retirees who are not Medicare-eligible with confidential consultations online with regard to the employee's or retiree's decision to select a plan during a period of open enrollment or at other times. The guidance tool shall operate using

information supplied by the employee or retiree as answers to questions concerning the health care needs of the employee or retiree, and the employee's or retiree's dependents if any.

b. A comprehensive health and wellness plan intended to provide biometric screening services, chronic condition coaching services, and smoking cessation services shall be available to all members of the School Employees' Health Benefits Program, including all members of the New Jersey Educators Health Plan and the Garden State Health Plan.

The School Employees' Health Benefits Commission shall provide, through a contract, for the services of wellness related providers for employees and retirees, and their dependents if any, enrolled in the program. The contract awarded by the commission shall be offered to employers, as defined in section 32 of P.L.2007, c.103 (C.52:14-17.46.2), who do not participate in the program so that their employees may have access to the same services and under same terms, conditions, and costs as the employees of employers who do participate.

The School Employees' Health Benefits Program shall promote, on an on-going basis, the expansion of the use of patient centered medical homes.

The School Employees' Health Benefits Plan Design Committee shall seek also to adopt, on an on-going basis, efforts and measures to support expanded population health arrangements that manage costs and prevent inappropriate utilization.

c. All provisions of law regarding the School Employees' Health Benefits Program shall remain applicable to the extent not inconsistent with, and shall not be interpreted in a manner that creates a direct impediment to the implementation of, this section and sections 1, 2, and 4 of this act, P.L.2020, c.44 (C.52:14-17.46.13, C.52:14-17.46.14, and C.52:14-17.46.16).

C.52:14-17.46.16 Calculation of contribution.

4. For employees and retirees who are not Medicare-eligible who are required to make a contribution pursuant to subsection a. or b. of section 2, or subsection d. of section 5, of this act, P.L.2020, c.44 (C.18A:16-13.2), due to enrollment in the New Jersey Educators Health Plan or the Garden State Health Plan, or the equivalent plan, as appropriate, a calculation shall be made in accordance with this section. The employee or retiree shall be required to contribute the lesser of: the amount calculated for that employee or retiree in accordance with subsection a. or b. of section 2, or in accordance with subsection d. of section 5, of this act, as appropriate; or the amount calculated for that employee or retiree in accordance with this section.

for family coverage or its equivalent -

an employee or retiree who earns less than \$25,000 shall pay 3 percent of the cost of coverage;

an employee or retiree who earns \$25,000 or more but less than \$30,000 shall pay 4 percent of the cost of coverage;

an employee or retiree who earns \$30,000 or more but less than \$35,000 shall pay 5 percent of the cost of coverage;

an employee or retiree who earns \$35,000 or more but less than \$40,000 shall pay 6 percent of the cost of coverage;

an employee or retiree who earns \$40,000 or more but less than \$45,000 shall pay 7 percent of the cost of coverage;

an employee or retiree who earns \$45,000 or more but less than \$50,000 shall pay 9 percent of the cost of coverage;

an employee or retiree who earns \$50,000 or more but less than \$55,000 shall pay 12 percent of the cost of coverage;

an employee or retiree who earns \$55,000 or more but less than \$60,000 shall pay 14 percent of the cost of coverage;

an employee or retiree who earns \$60,000 or more but less than \$65,000 shall pay 17 percent of the cost of coverage;

an employee or retiree who earns \$65,000 or more but less than \$70,000 shall pay 19 percent of the cost of coverage;

an employee or retiree who earns \$70,000 or more but less than \$75,000 shall pay 22 percent of the cost of coverage;

an employee or retiree who earns \$75,000 or more but less than \$80,000 shall pay 23 percent of the cost of coverage;

an employee or retiree who earns \$80,000 or more but less than \$85,000 shall pay 24 percent of the cost of coverage;

an employee or retiree who earns \$85,000 or more but less than \$90,000 shall pay 26 percent of the cost of coverage;

an employee or retiree who earns \$90,000 or more but less than \$95,000 shall pay 28 percent of the cost of coverage;

an employee or retiree who earns \$95,000 or more but less than \$100,000 shall pay 29 percent of the cost of coverage;

an employee or retiree who earns \$100,000 or more but less than \$110,000 shall pay 32 percent of the cost of coverage;

an employee or retiree who earns \$110,000 or more shall pay 35 percent of the cost of coverage

for individual coverage or its equivalent -

an employee or retiree who earns less than \$20,000 shall pay 4.5 percent of the cost of coverage;

an employee or retiree who earns \$20,000 or more but less than \$25,000 shall pay 5.5 percent of the cost of coverage;

an employee or retiree who earns \$25,000 or more but less than \$30,000 shall pay 7.5 percent of the cost of coverage;

an employee or retiree who earns \$30,000 or more but less than \$35,000 shall pay 10 percent of the cost of coverage;

an employee or retiree who earns \$35,000 or more but less than \$40,000 shall pay 11 percent of the cost of coverage;

an employee or retiree who earns \$40,000 or more but less than \$45,000 shall pay 12 percent of the cost of coverage;

an employee or retiree who earns \$45,000 or more but less than \$50,000 shall pay 14 percent of the cost of coverage;

an employee or retiree who earns \$50,000 or more but less than \$55,000 shall pay 20 percent of the cost of coverage;

an employee or retiree who earns \$55,000 or more but less than \$60,000 shall pay 23 percent of the cost of coverage;

an employee or retiree who earns \$60,000 or more but less than \$65,000 shall pay 27 percent of the cost of coverage;

an employee or retiree who earns \$65,000 or more but less than \$70,000 shall pay 29 percent of the cost of coverage;

an employee or retiree who earns \$70,000 or more but less than \$75,000 shall pay 32 percent of the cost of coverage;

an employee or retiree who earns \$75,000 or more but less than \$80,000 shall pay 33 percent of the cost of coverage;

an employee or retiree who earns \$80,000 or more but less than \$95,000 shall pay 34 percent of the cost of coverage;

an employee or retiree who earns \$95,000 or more shall pay 35 percent of the cost of coverage;

for member with child or spouse coverage or its equivalent -

an employee or retiree who earns less than \$25,000 shall pay 3.5 percent of the cost of coverage;

an employee or retiree who earns \$25,000 or more but less than \$30,000 shall pay 4.5 percent of the cost of coverage;

an employee or retiree who earns \$30,000 or more but less than \$35,000 shall pay 6 percent of the cost of coverage;

an employee or retiree who earns \$35,000 or more but less than \$40,000 shall pay 7 percent of the cost of coverage;

an employee or retiree who earns \$40,000 or more but less than \$45,000 shall pay 8 percent of the cost of coverage;

an employee or retiree who earns \$45,000 or more but less than \$50,000 shall pay 10 percent of the cost of coverage;

an employee or retiree who earns \$50,000 or more but less than \$55,000 shall pay 15 percent of the cost of coverage;

an employee or retiree who earns \$55,000 or more but less than \$60,000 shall pay 17 percent of the cost of coverage;

an employee or retiree who earns \$60,000 or more but less than \$65,000 shall pay 21 percent of the cost of coverage;

an employee or retiree who earns \$65,000 or more but less than \$70,000 shall pay 23 percent of the cost of coverage;

an employee or retiree who earns \$70,000 or more but less than \$75,000 shall pay 26 percent of the cost of coverage;

an employee or retiree who earns \$75,000 or more but less than \$80,000 shall pay 27 percent of the cost of coverage;

an employee or retiree who earns \$80,000 or more but less than \$85,000 shall pay 28 percent of the cost of coverage;

an employee or retiree who earns \$85,000 or more but less than \$100,000 shall pay 30 percent of the cost of coverage.

an employee or retiree who earns \$100,000 or more shall pay 35 percent of the cost of coverage.

The annual base salary of an employee shall be used to determine what the employee earns for the purpose of determining the percent of the cost of coverage. The annual retirement allowance, including any cost of living adjustments to that allowance, of a retiree who is not Medicare-eligible shall be used to determine what the retiree earns for the purpose of determining the percent of the cost of coverage.

As used in this section, "cost of coverage" means the premium or periodic charges for medical and prescription drug plan coverage, but not for dental, vision, or other health care, provided: (1) under the New Jersey Educators Health Plan or the Garden State Health Plan offered by the School Employees' Health Benefits Program pursuant to section 1 of P.L.2020, c.44 (C.52:14-17.46.13); or (2) under the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered by an employer pursuant to section 5

of P.L.2020, c.44 (C.18A:16-13.2) when that employer is not a participant in the School Employees' Health Benefits Program.

C.18A:16-13.2 Applicability to local boards of education, certain employers; enrollment period.

5. This section shall apply to local boards of education and employers, as specified in subsection j. of this section, who do not participate in the School Employees' Health Benefits Program.

a. (1) Notwithstanding the provisions of any other law, rule, or regulation to the contrary, beginning January 1, 2021 and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with P.L.1979, c.391 (C.18A:16-12 et seq.) shall offer to its employees, and their dependents if any, the equivalent of the New Jersey Educators Health Plan in the School Employees' Health Benefits Program as that plan design is described in subsection f. of section 1 of P.L.2020, c.44 (C.52:14-17.46.13).

Beginning July 1, 2021 and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with P.L.1979, c.391 (C.18A:16-12 et seq.) shall also offer a plan for its employees, and their dependents if any, that is the equivalent of the Garden State Health Plan in the School Employees' Health Benefits Program.

(2) The plans under this section shall be offered by the employer regardless of any collective negotiations agreement between the employer and its employees in effect on the effective date of this act, P.L.2020, c.44, that provides for enrollment in other plans offered by the employer.

No new health care benefits plans, other than those specified in paragraph (1) of this subsection, shall be added by the employer from January 1, 2021 through December 31, 2027 unless the provisions of any collective negotiations agreement entered into before or after the effective date of this act, P.L.2020, c.44, result in additional premium cost reductions. Nothing in this section shall prohibit an employer from offering health care benefits plans that existed prior to the effective date of this act.

(3) Commencing January 1, 2028, the employer may offer such other plans as may be required in accordance with any collective negotiations agreement between the employer and its employees.

b. Prior to January 1, 2021, each employer shall provide an enrollment period during which all employees who commenced employment prior to the effective date of this act shall be required to select affirmatively a plan provided by the employer. If an employee fails to select affirmatively a plan during this enrollment period, the employer shall enroll the employee, and the employee's dependents if any, in the equivalent New Jersey Educators Health Plan offered pursuant to subsection a. of this section for the year January 1, 2021 until December 31, 2021.

During the enrollment period, each person who is enrolled in a plan offered by the employer and who is paying the full cost of coverage shall also be required to select affirmatively a plan provided by the employer. If a person fails to select affirmatively a plan during this enrollment period, the employer shall enroll the person, and the person's dependents if any, in the equivalent New Jersey Educators Health Plan offered pursuant to subsection a. of this section for the year January 1, 2021 until December 31, 2021. Any such person shall continue to pay the full cost of coverage and shall not be subject to the contribution schedule or any mandatory enrollment period as set forth in this section.

c. (1) Beginning on January 1, 2021, an employee commencing employment on or after the effective date of this act but before January 1, 2028 who does not waive coverage, shall be enrolled by the employer in the equivalent New Jersey Educators Health Plan, or the equivalent Garden State Health Plan if selected by the employee, as those plans are offered pursuant to subsection a. of this section. The employee shall remain enrolled in either the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan selected by the employee at the annual open enrollment for each plan year until December 31, 2027, provided that the employee during this period may waive coverage as an employee and select and change the type of coverage received under the plan following a qualifying life event, in accordance with the plan regulations. Beginning January 1, 2028, the employee may select, during any open enrollment period or at such other times or under such conditions as the employer may provide, any plan offered by the employer.

(2) Except as otherwise provided in this subsection or subsection b. of this section, selection of a plan shall be at the sole discretion of the employee.

d. An employee shall contribute annually toward the cost of health care benefits coverage for the employee, and employee's dependents if any, the amount specified, in the manner specified, in subsection a. or b. of section 2 of this act, P.L.2020, c.44 (C.52:14-17.46.14) if the employee, and the employee's dependents if any, are enrolled in the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section. An employee's contribution toward the cost of coverage under the equivalent Garden State Health Plan offered pursuant to subsection a. of this section shall be the amount required in subsection b. of section 2 of this act, except that the contribution specified in that subsection shall not be less than the minimum annual contribution for health care benefits coverage of 1.5% of salary as required by law.

e. (1) An employee enrolled in the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section shall be required to pay only the contribution specified in subsections a. and b. of section 2 of this act, notwithstanding any other provision of law, rule, or regulation to the contrary requiring contributions by employees toward the cost of health care benefits coverage provided by an employer, except as provided in subsection d. of this section. No other contribution may be required by collective negotiations agreement, except as set forth in subsection i. of this section.

(2) Employees who are not enrolled in the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section shall continue, after the effective date of this act, P.L.2020, c.44, to contribute to health care benefits coverage and those contributions shall be determined in accordance with what is permitted or required by provisions of law.

An employee who is enrolled in a plan other than the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section shall be required to contribute toward the cost of health care benefits coverage offered by the employer (a) in accordance with a collective negotiations agreement applicable to that employee as negotiated prior to or after the effective date of this act pursuant to the requirements that were set forth in law on the day next preceding that effective date; (b) as may be required at the discretion of the employer; or (c) as required by a provision of law, whichever is applicable to that employee.

With regard to contributions by an employee who is enrolled in a plan other than the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section, no provision in this section shall be deemed

to modify, alter, impair, or terminate the requirement in sections 77 and 78 of P.L.2011, c.78 (C.18A:16-17.2 and C.52:14-17.28e), as applicable, that a public employer and employees who are in negotiations for the collective negotiations agreement to be executed after the employees in that unit had reached full implementation of the premium share set forth in section 39 of P.L.2011, c.78 (C.52:14-17.28c) shall conduct negotiations concerning contributions for health care benefits as if the full premium share was included in the prior contract. Nothing in this act shall be deemed to modify, alter, impair, or terminate the continued compliance after the effective date of this act with that requirement for negotiations for any collective negotiations agreement for employee contributions for plans other than the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section.

(3) For an employee, the annual base salary paid by the employer for the position held by the employee shall be used to identify the percentage to be used to calculate the annual contribution required under subsections a. and b. of section 2 of this act.

f. The annual contribution by an employee as calculated in accordance with subsection a. or b. of section 2 of this act shall not exceed the amount as calculated in accordance with section 4 of this act.

g. The contributions required by this section shall apply to employees for whom the employer has assumed a health care benefits payment obligation, to require that such employees pay the amount of contribution specified in this section for health care benefits coverage.

h. The level of benefits in the equivalent New Jersey Educators Health Plan and the equivalent Garden State Health Plan offered by the employer shall remain unchanged until December 31, 2027. No change in the level of benefits in those plans shall be made before that date unless such a change is required by federal or State law to governmental health care benefits plans or to both governmental and non-governmental health care benefits plans.

Commencing January 1, 2028 and for each plan year thereafter, the level of benefits in the equivalent New Jersey Educators Health Plan and the equivalent Garden State Health Plan offered by the employer may be modified by the employer in accordance with collective negotiations agreements entered into between the employers who do not participate in the School Employees' Health Benefits Program and their employees, or as otherwise permitted by law.

i. Commencing January 1, 2028 and for each plan year thereafter, the contributions required pursuant to subsections a. and b. of section 2 of this act for employees enrolled in the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan offered pursuant to subsection a. of this section may be modified in accordance with collective negotiations agreements entered into between the employers who do not participate in the School Employees' Health Benefits Program and their employees. The contributions required pursuant to subsections a. and b. of section 2 of this act shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties. Negotiations concerning contributions for health care benefits shall be conducted as if the contributions required pursuant to subsections a. and b. of section 2 of this act were included in the prior contract. The contribution scheme of the percentage of base salary set forth in those subsections may be modified or a new contribution scheme or method other than a percentage of salary may be provided for in accordance with a collective negotiations agreement.

j. Modifications to plan design of the plans set forth in section 1 of this act, P.L.2020, c.44 (C.52:14-17.46.13), or adjustments to the employee contribution rates set forth in

subsections a. and b. of section 2 of this act, made by the School Employees' Health Benefits Plan Design Committee or the State Treasurer pursuant to section 7 of this act shall be implemented for the purposes of this section by the employer commencing January 1, 2024.

k. This section shall also apply also when health care benefits coverage is provided through an insurance fund or joint insurance fund or any other manner. This section shall apply to any employer, as that term is defined in section 32 of P.L.2007, c.103 (C.52:14-17.46.2), that is not a participating employer in the School Employees' Health Benefits Program.

C.18A:16-13.3 Use of actual savings realized by school district.

6. a. Actual savings realized by a school district as a result of the implementation of the provisions of P.L.2020, c.44 (C.52:14-17.46.13 et al.) shall be used solely and exclusively by the school district for the purpose of reducing the amount that is required to be raised by the local property tax levy by the school district for school district purposes, except when a school district is spending below adequacy as calculated in accordance with section 1 of P.L.2018, c.67 (C.18A:7F-70).

When a cap on the annual increase in the property tax levy for a school district is imposed by law, the savings realized shall be deducted from the adjusted tax levy for the previous budget year and that reduced amount shall serve as the basis for calculating the adjusted tax levy for the next school year.

b. To enable tracking of health care cost savings by school districts, each school district shall submit an annual data sheet for both the current and prior year showing the Total Annual Cost of Health Benefits for Active Employees, the Total Employee Cost-Sharing Contribution, and the Net Cost to the School District for Health Benefits, including the Number of Covered Employees, the Annual Cost Estimate Per Employee, and the Total Cost for each coverage category – Single Coverage, Parent and Child, Employee and Spouse, and Family.

In addition, school districts shall provide separate breakouts of the same categories of data for health care coverage under all health care benefits plans offered by the employer. The datasheet shall also indicate whether the school district is enrolled in the School Employees' Health Benefits Program for medical or medical and prescription drug benefits coverage. Reports shall be due no later than 60 days following each enrollment period to the Department of Education, the Division of Pensions and Benefits in the Department of the Treasury, and the Legislature.

7. Within 30 calendar days after June 30, 2023, the State's actuary for the School Employees' Health Benefits Program shall issue an actuarial report validating a net annualized savings of at least \$300 million comparing plan years 2020, 2021, and 2022 that shall measure the implementation of the New Jersey Educators Plan and Garden State Health Plan, and the SEHBP NJ Direct 10 and the SEHBP NJ Direct 15 plans, provided by those school districts and county colleges both that participate and that do not participate in the School Employees' Health Benefits Program, inclusive of pre-Medicare retirees paid for by the State and the value of early plan design changes implemented in Fiscal Year 2020.

In the event that the net annualized savings Statewide were less than \$300 million, the School Employees' Health Benefits Plan Design Committee shall, within 60 days from the issuance of the actuary's report, make plan design changes, or adjustments to employee contributions, or both, for the New Jersey Educators Health Plan, or the Garden State Health Plan, or both, or also plan design changes to the SEHBP NJ Direct 10 or SEHBP NJ Direct

15 plans, or both, to make up the estimated shortfall over the remaining duration of the period covered by this act, P.L.2020, c.44 (C.52:14-17.46.13 et al.), ending December 31, 2027.

In the event that the committee is unable to agree upon the needed plan design changes or adjustments to employee contributions, or both, within the 60-day period to achieve the \$300 million in net annualized savings, the State Treasurer shall construct and implement, within 45 days, plan design changes or adjustments to employee contributions, or both, necessary to achieve the savings, as validated by the State's actuary for the program, and implement such changes and adjustments.

In the event there is a shortfall, the committee or the State Treasurer shall have a resolution for any shortfall no later than October 1, 2023 for implementation for January 1, 2024.

No monies from the claims stabilization reserve fund or equivalent fund established or maintained for the School Employees' Health Benefits Program to pay incurred claims that have not yet been settled, shall be used for the actuary's calculations required by this section.

8. With regard to employers that have collective negotiation agreements in effect on the effective date of this act, P.L.2020, c.44, that include health care benefits coverage available to employees when the net cost to the employer is lower than the cost to the employer would be compared to the New Jersey Educators Health Plan, the employer and the majority representative shall engage in collective negotiations over the financial impact of the difference.

9. This act shall take effect immediately.

Approved July 1, 2020.

EXHIBIT B

ASSEMBLY APPROPRIATIONS
COMMITTEE

STATEMENT TO

SENATE, No. 2273

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 26, 2020

The Assembly Appropriations Committee reports favorably Senate Bill No. 2273 with committee amendments.

This bill requires the School Employees' Health Benefits Program (SEHBP) to offer only three plans, beginning on January 1, 2021, for medical and prescription benefits coverage. The three plans will be the New Jersey Educators Health Plan; the SEHBP NJ Direct 10 plan as adopted and implemented by the School Employees' Health Benefits Commission for plan year 2020; and the SEHBP NJ Direct 15 plan as adopted and implemented by the School Employees' Health Benefits Commission for plan year 2020.

The SEHBP applies to the following employers who elect to participate in the SEHBP: local school district, regional school district, county vocational school district, county special services school district, jointure commission, educational services commission, State-operated school district, charter school, county college, any officer, board, or commission under the authority of the Commissioner of Education or of the State Board of Education, and any other public entity which is established pursuant to authority provided by Title 18A of the New Jersey Statutes, but excluding the State public institutions of higher education and excluding those public entities where the employer is the State of New Jersey. The provisions of this bill also apply, under section 5, to these same employers even if they do not elect to participate in the SEHBP.

The New Jersey Educators Health Plan will have the benefits specified in the bill.

The bill requires the SEHBP to provide, during an enrollment period before January 1, 2021, that all employees who commenced employment before the effective date of the bill select affirmatively one of the three plans. If an employee fails to select affirmatively a plan during the enrollment period, the SEHBP will enroll the employee, and their dependents if any, in the New Jersey Educators Health Plan for plan year beginning January 1, 2021.

The bill requires the SEHBP, beginning January 1, 2021, to enroll an employee who commences employment on or after the effective

date of the bill but before January 1, 2028 in the New Jersey Educators Health Plan, or in the Garden State Health Plan if the Garden State Health Plan is selected by the employee. For the plan year that commences January 1, 2028, the employee may select, during any open enrollment period, any one of the plans provided by the SEHBP.

The bill requires the program, for the plan year beginning January 1, 2021, to enroll any retiree who is not Medicare-eligible, and the retiree's dependents if any, in the New Jersey Educators Health Plan for health care benefits as a retiree. The retiree must remain in that plan until December 31, 2027 or until the retiree become eligible for Medicare, whichever comes first.

Beginning July 1, 2021, the SEHBP must also offer a Garden State Health Plan. The plan will be developed by the School Employees' Health Benefits Plan Design Committee. The Garden State Health Plan will provide medical and prescription drug benefits that are equivalent to the level of medical and prescription drug benefits provided by the New Jersey Educators Health Plan, except that the benefits under the Garden State Health Plan will be available only from providers located in the State of New Jersey with certain exceptions.

The level of benefits in the New Jersey Educators Health Plan, the Garden State Health Plan, the NJ Direct 10, and the NJ Direct 15 plan will remain unchanged until December 31, 2027. For the plan year that commences January 1, 2028, the benefits in the plans may be modified by the plan design committee. Employers that do not participate in the SEHBP may modify, through collective negotiations agreements, the employee contributions required for New Jersey Educators Health Plan and the Garden State Health Plan, beginning for the plan year that starts January 1, 2028 and thereafter.

The bill requires an employee, or a retiree who is not Medicare-eligible and who is required by law to contribute in retirement toward the cost of health care coverage under the program, to contribute annually a percentage of base salary or retirement allowance, including any cost of living adjustment to that retirement allowance, toward the cost of the health care benefits coverage under the New Jersey Educators Health Plan and the Garden State Health Plan. The percentages are specified in the bill. However, the contribution cannot be less than the contribution of 1.5% of salary that is required by current law.

The required contribution toward the cost of health care benefits coverage under the Garden State Health Plan will be one half of the percentages required for the New Jersey Educators Health Plan. However, the contribution cannot be less than the contribution of 1.5% of salary that is required by current law.

The amount of the annual contribution for either plan cannot exceed the amount that is the result of a calculation using the chart

established under P.L.2011, c.78 that was formerly applicable to determine a contribution that was a percentage of premium.

An employee who selects a plan other than the New Jersey Educators Health Plan or the Garden State Health Plan will be required to contribute toward the cost of coverage (1) in accordance with a collective negotiations agreement applicable to that employee as negotiated in accordance with certain requirements of P.L.2011, c.78; (2) as may be required at the discretion of the employer; or (3) as required by a provision of law, whichever is applicable to that employee.

The bill requires eligible employers that do not participate in the SEHBP to also offer the equivalent of the New Jersey Educators Health Plan beginning January 1, 2021, and the equivalent of the Garden State Health Plan beginning July 1, 2021. The level of benefits in these two plans will remain unchanged through December 31, 2027.

No new plans, other than the equivalent New Jersey Educators Health Plan and the equivalent Garden State Health Plan, may be provided during that period unless the provisions of collective negotiations agreements entered into before or after the effective date of this bill result in additional premium cost reductions. Health care benefits plans that existed before the effective date of the bill may continue to be offered by employers that do not participate in the SEHBP.

The employees of employers that do not participate in the SEHBP will also be required to make the contributions described above if they enroll in the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan. Eligible employers may modify, through collective negotiations agreements, the two plans and the contributions required for those plans, for the year beginning January 1, 2028 and thereafter. The enrollment provisions required for these employers for the new plans will be the same as those for the employers who participate in the SEHBP.

The bill requires that actual savings realized by a school district as a result of the implementation of this bill be used solely and exclusively by the school district for the purpose of reducing the amount that is required to be raised by the local property tax levy by the school district for school district purposes, except when a school district is spending below adequacy as calculated in accordance with N.J.S.A.18A:7F-70. When a cap on the annual increase in the property tax levy for a school district is imposed by law, the savings realized shall be deducted from the adjusted tax levy for the previous budget year and the difference shall serve as the basis for calculating the adjusted tax levy for the next year.

The bill requires certain annual reports from school districts.

The bill also requires the SEHBP to:

develop a guidance tool to provide employees and retirees with confidential consultations online with regard to the employee's or retiree's decision to select a plan during the period of open enrollment or at other times.

make a comprehensive health and wellness plan intended to provide biometric screening services, chronic condition coaching services, and smoking cessation services available to all SEHBP participants.

provide for the services, through a contract, of wellness related providers for employees and retirees, and their dependents, enrolled in the program, and offer this to employers who do not participate in the SEHBP.

promote, on an on-going basis, the expansion of the use of patient centered medical homes.

seek to adopt, on an on-going basis, efforts and measures to support expanded population health arrangements that manage costs and prevent inappropriate utilization.

The bill requires the State's actuary for the School Employees' Health Benefits Program, within 30 days after June 30, 2023, to issue a report validating a net annualized savings of at least \$300 million comparing plan year 2020, 2021, and 2022 that measures the implementation of the New Jersey Educators Plan and Garden State Health Plan, and the SEHBP NJ Direct 10 and the SEHBP NJ Direct 15 plans, provided by those school districts and county colleges both that participate and that do not participate in the School Employees' Health Benefits Program, inclusive of pre-Medicare retirees paid for by the State and the value of early plan design changes also implemented in Fiscal Year 2020. If the net annualized savings Statewide were less than \$300 million, the School Employees' Health Benefits Plan Design Committee must, within 60 days from the issuance of the actuary's report, make plan design changes, or adjustments to employee contributions, or both, for the New Jersey Educators Health Plan, or the Garden State Health Plan, or both, or also plan design changes to the SEHBP NJ Direct 10 or SEHBP NJ Direct 15 plans, or both, to make up the estimated shortfall over the remaining duration of the period covered by this bill ending December 31, 2027. If the committee is unable to agree upon the needed plan design changes or adjustments to employee contributions, or both, within the 60-day period to achieve the \$300 million in net annualized savings, the State Treasurer must construct and implement, within 45 days, plan design changes or adjustments to employee contributions, or both, necessary to achieve the savings, as validated by the State's actuary for the program, and implement such changes and adjustments.

If there is a shortfall, the committee or the State Treasurer must have a resolution for any shortfall no later than October 1, 2023 for implementation for January 1, 2024. The bill prohibits the use of monies from the claims stabilization reserve fund or equivalent fund

established or maintained for the School Employees' Health Benefits Program to pay incurred claims that have not yet been settled, for the actuary's calculations of savings.

The bill requires the modifications made to achieve the savings to be implemented by the SEHBP and by employers that do not participate in the SEHBP.

The bill requires employers that have collective negotiation agreements in effect on the effective date of this bill that include health care benefits coverage available to employees when the net cost to the employer is lower than the cost to the employer would be compared to the New Jersey Educators Health Plan to negotiate with the majority representative of the employees over the financial impact of the difference.

COMMITTEE AMENDMENTS

These amendments:

remove the provision of the bill that would have changed the plan year for the School Employees' Health Benefits Program so that the plan year will remain January 1 to December 31.

change the dates in this bill so that its provisions will apply January 1, 2021 through December 31, 2027.

affirm that employers participating in the School Employees' Health Benefits Program will retain the ability to enter the program for medical only plans and may separately purchase pharmacy and dental benefits outside of the program without limitation or restriction.

require those employees who commenced employment prior to the bill's effective date to select a plan for 2021 during the next enrollment period.

require those employees who commenced employment after the bill's effective date to be enrolled for 2021 through 2027 in the New Jersey Educators Health Plan, or the equivalent plan offered by boards of education that do not participate in the program, or the Garden State Health Plan or the equivalent plan if that plan is selected by the employee.

affirm the ability of an employee required to be enrolled in the New Jersey Educators Health Plan, or the equivalent plan offered by boards of education that do not participate in the program, to waive coverage or change type of coverage within that plan.

affirm that a dependent of a retiree who is not Medicare-eligible may remain enrolled in the New Jersey Educators Health Plan after the retiree becomes Medicare-eligible.

change references to "level of benefits" in the School Employees' Health Benefits Program to "plan designs".

require the implementation by January 1, 2024, by both the School Employees' Health Benefits Program and by employers that do not participate in the program, of any modifications to the program's plan designs or any adjustments to employee contributions rates, or both,

made by the School Employees' Health Benefits Plan Design Committee or the State Treasurer as required by the bill to attain a certain level of savings.

change references to the effective dates for out of network limits on chiropractic care, physical therapy care, and acupuncture care covered by the School Employees' Health Benefits Program.

require that the retirement allowance of certain retirees include any cost of living adjustment thereto when used to calculate the contribution to be paid by the retiree for health care costs in the School Employees' Health Benefits Program.

require the School Employees' Health Benefits Program to offer the contract for services of wellness related providers to employers and employees not participating in the program.

require a comprehensive health and wellness plan be available to all members of the School Employees' Health Benefits Program, and remove a reference that the School Employees' Health Benefits Plan Design Committee develop such a plan.

require the datasheet to be provided by school districts to indicate if the district participates in the School Employees' Health Benefits Program for medical or for medical and prescription drug benefits coverage.

require the State's actuary for the School Employees' Health Benefits Program, within 30 days after June 30, 2023, to issue a report validating a net annualized savings of at least \$300 million comparing plan year 2020, 2021, and 2022 that measures the implementation of the New Jersey Educators Plan and Garden State Health Plan, and the SEHBP NJ Direct 10 and the SEHBP NJ Direct 15 plans, provided by those school districts and county colleges both that participate and that do not participate in the School Employees' Health Benefits Program, inclusive of pre-Medicare retirees paid for by the State and the value of early plan design changes also implemented in Fiscal Year 2020.

provide that if the net annualized savings Statewide were less than \$300 million, the School Employees' Health Benefits Plan Design Committee must, within 60 days from the issuance of the actuary's report, make plan design changes, or adjustments to employee contributions, or both, for the New Jersey Educators Health Plan, or the Garden State Health Plan, or both, or also plan design changes to the SEHBP NJ Direct 10 or SEHBP NJ Direct 15 plans, or both, to make up the estimated shortfall over the remaining duration of the period covered by this bill ending December 31, 2027.

provide that if the committee is unable to agree upon the needed plan design changes or adjustments to employee contributions, or both, within the 60-day period to achieve the \$300 million in net annualized savings, the State Treasurer must construct and implement, within 45 days, plan design changes or adjustments to employee contributions, or both, necessary to achieve the savings, as validated by the State's actuary for the program, and implement such changes and adjustments.

provide that if there is a shortfall, the committee or the State Treasurer must have a resolution for any shortfall no later than October 1, 2023 for implementation for January 1, 2024.

prohibit the use of monies from the claims stabilization reserve fund or equivalent fund established or maintained for the School Employees' Health Benefits Program to pay incurred claims that have not yet been settled, for the actuary's calculations of savings.

require employers that have collective negotiation agreements in effect on the effective date of this bill that include health care benefits coverage available to employees when the net cost to the employer is lower than the cost to the employer would be compared to the New Jersey Educators Health Plan to negotiate with the majority representative of the employees over the financial impact of the difference.

The intent of the amendments with regard to the calculation of net annualized savings is that the calculation will be the result of taking the total savings and reducing that total by the amount of the reduction in contributions paid by employees and retirees in each year.

FISCAL IMPACT

The anticipated net savings associated with plan design changes offset by reductions in employee contributions are indeterminate. The savings from the restructuring of the plans offered by the SEHBP and equivalent plans required to be offered by non-SEHBP employers are indeterminate because migration is not predictable. The greatest savings are predicated on 100 percent migration to the new plans and various plan design changes. If the equivalent new plans are less expensive than the plans currently offered by non-SEHBP employers and employees migrate to those plans then non-SEHBP employers will experience greater savings. These savings will be offset by reductions in employee contributions of those members who choose to migrate to the new plans.